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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JAMES WARE, CHIEF JUDGE

U.S. ETHERNET INNOVATIONS, LLC,

PLAINTIFF,

VS.

ACER, INC., ET AL.,

DEFENDANTS.

NO. C 10-3724 JW
C 10-5254 JW
C 10-3481 JW

SAN FRANCISCO, CALIFORNIA
THURSDAY
MAY 3, 2011
9:00 O'CLOCK A.M.

AT&T MOBILITY, LLC., ET AL.,

DEFENDANTS.

ZIONS BANCORPORATION,

PLAINTIFF,

VS.

U.S. ETHERNET INNOVATIONS, LLC,

DEFENDANT.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES ON NEXT PAGE

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OFFICIAL REPORTER - US DISTRICT COURT
COMPUTERIZED TRANSCRIPTION BY ECLIPSE

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MAY 3. 2012 9:00 O'CLOCK A.M.

P R O C E E D I N G S

THE CLERK: CALLING CASES C 10-3724, U.S. ETHERNET INNOVATIONS VERSUS ACER, INC.; C 10-3481, ZIONS BANCORPORATION VERSUS U.S. ETHERNET INNOVATIONS; AND C 10-5254, U.S. ETHERNET INNOVATIONS VERSUS AT&T MOBILITY.

COUNSEL THAT ARE SPEAKING, PLEASE APPROACH AND STATE YOUR NAME FOR THE RECORD.

MR. HERMAN: GOOD MORNING. JOHN HERMAN FOR U.S. ETHERNET.

THE COURT: MR. HERMAN.

MR. WALSH: GOOD MORNING, YOUR HONOR. RYAN WALSH FOR U.S. ETHERNET.

THE COURT: MR. WALSH.

MR. STEPHENS: GOOD MORNING, YOUR HONOR. GARLAND STEPHENS FOR INTEL CORPORATION.

THE COURT: MR. STEPHENS.

MR. CORDELL: GOOD MORNING, YOUR HONOR. RUFFIN CORDELL FOR INTEL.

THE COURT: OKAY.

MR. ZADO: GOOD MORNING, YOUR HONOR. RAY ZADO FROM MARVELL SEMICONDUCTOR.

THE COURT: MR. ZADO.

THAT'S IT? WELL, I OFTEN AM ASKED ABOUT THE JOB OF

JUDGING, AND I ALWAYS SAY CRIMINAL SENTENCING IS THE MOST DIFFICULT PART OF THE JOB. CLAIM CONSTRUCTION IS PROBABLY THE MOST INTERESTING PART OF THE JOB, AND I DO APPRECIATE THAT THIS IS A SECOND ROUND WITH RESPECT TO THESE MATTERS. AND I DID NOTICE THAT SOME ADDITIONAL TERMS WERE ADDED BEYOND OUR MAGIC TEN AS A PART OF THIS.

AND SO SOME OF IT IS A MATTER THAT WE'RE COMING TO FOR THE FIRST TIME, AND OTHER PARTS OF IT ARE AT THE INVITATION OF THE COURT TO KIND OF GIVE ME A LITTLE BIT MORE TO HELP ME WITH SOME TERMS THAT I WAS HAVING SOME DIFFICULTY WITH.

AND I WAS TOLD BY MY STAFF AS WE WERE PREPARING FOR THIS THAT THE PARTIES HAD PROPOSED DECLARATIONS WITH RESPECT TO AT LEAST ONE OF THE TERMS, AND THAT I WOULD BE ADVISED ABOUT THAT. THESE WERE COMPETING DECLARATIONS.

AS PART OF THE CLAIM CONSTRUCTION PROCESS, I TRY TO GET AWAY WITH NOT HAVING DECLARATIONS OR OTHER EXTRINSIC INFORMATION UNLESS I FIND THAT I CAN'T FROM WITHIN THE INTRINSIC INFORMATION COME TO A DEFINITION.

BUT I'LL LEAVE IT TO THE PARTIES. IF YOU BOTH AGREE THAT THIS IS A CASE WHERE DECLARATIONS, YOU BELIEVE, WOULD BE HELPFUL, LET ME KNOW THAT YOU'RE NOW GOING OUTSIDE OF THE INTRINSIC RECORD AND GIVING ME SOMETHING NEW AND DIFFERENT SO I CAN MAKE SURE I PAY ATTENTION TO THAT WHEN I'M ADDRESSING THESE MATTERS IN ORDER. OKAY?

SO WHO IS GOING FIRST?

MR. HERMAN: GOOD MORNING, YOUR HONOR. JOHN HERMAN FOR PLAINTIFF.

THE COURT: AS I UNDERSTAND IT, YOU'RE GOING TO DIVIDE THE TERMS AND KIND OF USE YOUR TIME BACK AND FORTH. I'M NOT GOING TO KEEP TRACK OF THE TIME. I PRESUME YOU WILL, SO THAT WE'LL TAKE A BREAK SOMEWHERE IN THE MIDDLE OF OUR SESSION.

BUT SO YOU KIND OF DIVIDE IT UP, THE WORK, BETWEEN THE TWO SIDES.

MR. HERMAN: YES, YOUR HONOR. AND WE'VE BROKEN IT DOWN BY AGREEMENT OF THE PARTIES INTO THREE DISTINCT CATEGORIES.

THE COURT: ALL RIGHT.

MR. HERMAN: THE FIRST CATEGORY THAT WE'LL COLLECTIVELY ADDRESS WILL BE THE THREE TASK TERMS: FRAME TRANSMISSION TASK, FRAME TRANSFER TASK AND MEDIUM ACCESS TASK. THEN, THE SIX MEANS-PLUS-FUNCTION TERMS YOUR HONOR IDENTIFIED IN YOUR FIRST MARKMAN ORDER. AND THEN, THE TEN LOGIC TERMS THAT YOUR HONOR INSTRUCTED THE PARTIES TO MEET AND CONFER ABOUT AND SUBMIT TO THE COURT.

THE COURT: ALL RIGHT.

MR. HERMAN: SO THE INTENT WILL BE FOR US TO GO FIRST ON THE TASK TERMS, TO TURN IT OVER TO THE PLAINTIFFS FOR A RESPONSE, AND THEN WE'D HAVE A BRIEF REBUTTAL. THEN, WE'D CLOSE OUT THE ARGUMENT ON THE TASK TERMS AND DO THE SAME THING FOR THE MEANS-PLUS-FUNCTION AND LOGIC TERMS.

THE COURT: VERY WELL.

MR. HERMAN: GIVEN THAT THIS IS -- THAT WE HAVE 19 TERMS, I UNDERSTAND WE HAVE A LIMITED TIME PERIOD WITH YOUR HONOR THIS MORNING, AND THAT THIS IS THE SECOND MARKMAN HEARING I'M GOING TO DISPENSE WITH ANY KIND OF ELABORATE INTRODUCTION AND MOVE RIGHT INTO THE TASK TERMS.

THE COURT: I WOULD APPRECIATE THAT.

MR. HERMAN: SO ALL THREE OF THESE TERMS ARE IN THE '094 PATENT. AND THEY APPEAR IN A NUMBER OF THE INDEPENDENT CLAIMS. SO THE '094 PATENT, THE INTRODUCTION OF ALL THE INDEPENDENT CLAIMS READS:

"A METHOD FOR TRANSMITTING A FRAME OF DATA FROM A HOST SYSTEM THROUGH A NETWORK INTERFACE DEVICE TO A NETWORK."

SO ALL OF THESE CLAIM TERMS ARE IN THE CONTEXT OF MOVING A FRAME OF DATA FROM THE HOST COMPUTER TO THE BUFFER MEMORY AND THEN OUT TO THE NETWORK. THAT'S WHAT THESE PATENTS, THE METHOD AND CLAIM COVERS.

EACH OF THE TASK TERMS AT ISSUE BEFORE YOUR HONOR COMBINE WELL-UNDERSTOOD ETHERNET CONCEPTS. AND I'LL GET INTO THIS IN SOME DETAIL. FRAME TRANSMISSION, FRAME TRANSFER AND MEDIUM ACCESS ARE ALL WELL-UNDERSTOOD ETHERNET CONCEPTS.

WE DON'T BELIEVE THAT SIMPLY ADDING THE WORD "TASK" TO THESE CONCEPTS RENDERS THE CLAIMS INDEFINITE. COULD EASILY HAVE SAID "OPERATION" OR SOMETHING ALONG THOSE LINES.

THE TASK TERMS, AS YOUR HONOR KNOWS, ARE ENTITLED TO

FULL SCOPE OF THE CLAIM LANGUAGE. AND YOUR HONOR CORRECTLY POINTED OUT IN THE FIRST MARKMAN ORDER THAT THE TASK TODAY, IF YOU WILL, IS TO DETERMINE WHAT A POSITA WOULD UNDERSTAND THESE TERMS TO MEAN IN THE CONTEXT OF THE '094 PATENT.

ABSENT A CLEAR DISAVOWAL IN THE SPECIFICATION OR THE PROSECUTION HISTORY, THE PATENTEE IS ENTITLED TO THE FULL SCOPE OF ITS CLAIM LANGUAGE.

WE DON'T THINK THERE'S BEEN ANY SHOWING OF ANY KIND OF CLEAR DISAVOWAL IN THIS CASE.

I DON'T THINK IT'S DISPUTED. THESE ARE NOT MEANS-PLUS-FUNCTION TERMS. WE'RE NOT LIMITED TO STRUCTURE IN THE SPECIFICATION AND STANDARD CLAIM CONSTRUCTION PRINCIPLES APPLY.

SO WHAT WE'RE TRYING TO DO IS FIGURE OUT WHAT THE PROPER CONSTRUCTION FOR POSITA UNDERSTANDING. WE DON'T HAVE TO FIGURE OUT WHERE THESE THINGS TAKE PLACE OR THE EXACT ALGORITHMS THAT ARE APPLIED AS LONG AS A POSITA WOULD UNDERSTAND IT.

AND, OF COURSE, YOUR HONOR COVERED THE LAW OF INDEFINITENESS IN YOUR FIRST ORDER WE THINK APPROPRIATELY. SO THERE ARE TWO CASES THAT THE PARTIES HAVE RESPECTIVELY CITED ON THIS FOR THESE TERMS. THE BANCORP CASE THAT WE BELIEVE SUPPORTS OUR POSITION DIRECTLY. IT'S FED. CIRCUIT OPINION IN 2004.

AND THE DEFENDANTS HAVE CITED THE AGERE CASE. AND THE DISTINCTION BETWEEN THESE TWO CASES, I THINK, IS APPROPRIATE. AND THIS IS WHERE THE ARGUMENT COMES DOWN TODAY.

IN THE BANCORP CASE, THE DISTRICT COURT HAD FOUND THE

TERM "SURRENDER VALUE PROTECTED INVESTMENT SERVICES" AS INDEFINITE. THE FEDERAL CIRCUIT REVERSED BECAUSE THE COMPONENT TERMS WERE UNDERSTOOD BY POSITA.

AND CONTRAST THAT WITH THE AGERE SYSTEMS CASE CITED BY THE DEFENDANTS. THERE WAS A 28-WORD LONG TERM THAT DID NOT HAVE A MEANING IN THE ART.

AND THE COURT THERE, THE EASTERN DISTRICT OF PENNSYLVANIA, FOUND THAT TERM TO BE INDEFINITE. SO THE QUESTION IS: DO THESE TERMS HAVE A MEANING IN THE ART OR NOT, AS YOUR HONOR CORRECTLY POINTED OUT IN YOUR FIRST ORDER.

THE PARTIES' RESPECTIVE POSITIONS ON "FRAME TRANSMISSION TASK," WE THINK PLAIN AND ORDINARY MEANING APPLIES. AND THAT IS:

> "COMMANDS OR INSTRUCTIONS TO INITIATE TRANSMISSION OF A FRAME."

THE DEFENDANT'S POSITION TODAY THAT IS THE TERM IS INDEFINITE.

I THINK IT'S IMPORTANT TO NOTE IN THE JOINT CLAIMS CONSTRUCTION STATEMENT THAT WAS INITIALLY FILED THEY DID NOT ALLEGE IT WAS INDEFINITE. INSTEAD, THEY TOLD YOUR HONOR THAT THE COURT DOESN'T NEED CONSTRUCTION. INSTEAD, THEY WANTED THE LARGER PHRASE:

> "EXECUTING A FRAME TRANSMISSION TASK IN THE NETWORK INTERFACE DEVICE" TO BE CONSTRUED.

AGAIN, THIS LARGER PHRASE IN THE 4-2 EXCHANGE THE

DEFENDANTS DID NOT ALLEGE IT WAS INDEFINITE. IT WAS ONLY IN THE 4-3 EXCHANGE THAT THE INDEFINITENESS ARGUMENT POPPED UP FOR THE FIRST TIME.

SO WHAT DOES "FRAME TRANSMISSION TASK" MEAN?

FRAME TRANSMISSION OPERATIONS WERE WELL-UNDERSTOOD IN THE ART IN THE 1990'S. AND THIS IS SHOWN BOTH IN THE ETHERNET SPECIFICATION DISCLOSURE AND IN THE IEEE 802.3.

THE ETHERNET SPECIFICATION IN WHICH INTEL WAS A PARTY PUTTING TOGETHER HAD A VERY ELABORATE AND DEFINED "FRAME TRANSMISSION OPERATION" IS WHAT THE SPECIFICATION CALLED IT.

THIS BECAME THE STANDARD IN ORDER TO TRANSMIT A FRAME OF DATA FROM A HOST COMPUTER OUT TO A NETWORK. SO THIS FRAME TRANSMISSION OPERATION, IT WAS IMPLEMENTED IN THE VERSION 1.0 OF THE SPECIFICATION, HAD A VERY DEFINED SET OF ALGORITHMS THAT APPLIED TO FRAME TRANSMISSION.

THIS IS BACK IN 1980. THIS IS A DECADE BEFORE THESE PATENTS. SO ONE OF ORDINARY SKILL IN THE ART -- AT LEAST SOMEONE WHO IS COMPETENT IN THE ART IN THE EARLY '90'S -- WOULD UNDERSTAND EXACTLY WHAT A FRAME TRANSMISSION MEANT IN THE CONTEXT OF ETHERNET.

THIS IS PART OF THE SPECIFICATION. INTERESTINGLY --

THE COURT: IS THE -- I NOTICE HERE IT'S THE FRAME TRANSMISSION OPERATION, AND I CAN'T READ ALL OF THAT, BUT THE CLAIM HERE SAYS "EXECUTING A FRAME TRANSMISSION TASK."

SO I PRESUME THAT THE INVENTOR HERE HAD IN MIND

SOMETHING THAT WAS GOING TO BE DONE IN PARTICULAR THAT INITIATES TRANSMISSION.

SO WHILE FRAME TRANSMISSION OR FRAME TRANSMISSION OPERATION MIGHT HAVE BEEN KNOWN, DO I NEED TO BE CONCERNED WITH THOSE FRAME TRANSMISSION OPERATIONS THAT INITIATE TRANSMISSION? IS THE INITIATION OF TRANSMISSION AN IMPORTANT COMPONENT OF WHAT IS CALLED A "FRAME TRANSMISSION TASK"?

MR. HERMAN: I UNDERSTAND, YOUR HONOR. THAT EXACT QUESTIONS WAS DISCUSSED IN THE PROSECUTION HISTORY. AND WE DIDN'T -- AT THE TIME OF THE FIRST HEARING WE DID NOT RECOGNIZE THAT TO BE AN ISSUE.

THE INDEFINITENESS ISSUE POPPED UP AT THE LAST SECOND, AND WE DIDN'T REALIZE, SO WE DID NOT PRESENT THE PROSECUTION HISTORY TO YOUR HONOR ON THIS.

I WOULD LIKE TO DO SO TODAY, AND I THINK IT WILL HELP ANSWER THAT EXACT QUESTION, YOUR HONOR.

THE COURT: SO BUT AT THIS POINT WHERE YOU'RE SATISFYING ME IS THAT THE PHRASE "FRAME TRANSMISSION OPERATION" WAS A COMMONLY UNDERSTOOD PHRASE USED IN THE ART AT THE TIME.

MR. HERMAN: ABSOLUTELY. AND I'D LIKE TO TURN NOW TO, IN PART, ADDRESS YOUR HONOR'S QUESTION WITH THE PROSECUTION HISTORY.

THIS IS IN THE EXCERPTS THAT WE WANTED TO CITE YOUR HONOR TO. THERE WAS AN OFFICE ACTION. I BELIEVE IT'S CITED IN THE DEFENDANTS' BRIEF. THERE WAS AN OFFICE ACTION DATED MARCH 9,

1996, WHERE THE EXAMINER REJECTED THIS CLAIM, CLAIM ONE OF THE '094 PATENT FOR DOUBLE PATENTING. AND IT COMPARED THE FRAME TRANSMISSION TASK TO WHAT WAS IN THE ISSUED '872 PATENT, WHICH IS PART OF THIS SAME 3COM SET OF PATENTS. AND THE EXAMINER FOUND THAT THE FRAME TRANSMISSION TASK IN CLAIM 21 WAS THE SAME THING AS THE PATENT CLAIM IN THE '872 PATENT.

AND THAT PATENT PROVIDED FOR A NETWORK INTERFACE ADAPTER THAT INCLUDES A MEDIUM ACCESS CONTROLLER FOR MANAGING TRANSMISSION OF FRAMES OF DATA FROM THE BUFFER MEMORY TO THE NETWORK. AND THEN, THE LOGIC WHICH INITIATES THE TRANSMISSION.

SO THE EXAMINER, ONE OF ORDINARY SKILL IN THE ART, LOOKED AT THIS EXACT CLAIM TERM, "FRAME TRANSMISSION TASK" AND FOUND IT TO HAVE THE SAME MEANING AS THE PATENT CLAIM IN THE '872 PATENT THAT PROVIDED FOR MEDIUM ACCESS CONTROLLER TO MANAGE TRANSMISSION OF FRAMES.

THE COURT: WAS '872, 21, WERE THOSE BOTH METHOD CLAIMS?

MR. HERMAN: NO, I DON'T BELIEVE THE '872 PATENT WAS A METHOD CLAIM.

THE COURT: DOES IT MAKE A DIFFERENCE THAT -- BECAUSE, YOU KNOW, IF YOU'VE GOT A DEVICE AND YOU SAY THE DEVICE DOES SOMETHING, WHAT IT DOES COULD BE IMPORTANT FOR WHAT IT IS BECAUSE THE CLAIM IS WHAT IT IS.

DO I NEED TO BE MORE CONCERNED IN A METHOD CLAIM, THOUGH, FOR WHAT IT DOES, BECAUSE THAT BECOMES THE INVENTION?

MR. HERMAN: THERE WAS AN INTERNAL DISCLAIMER ADDED TO FIX THE REJECTION OF THE EXAMINER HERE. BUT I THINK THE POINT THAT WE'RE TRYING TO ESTABLISH IS THAT THE EXAMINER WHO IS ONE OF SKILL IN THE ART READING THIS PATENT UNDERSTOOD EXACTLY WHAT THE FRAME TRANSMISSION TASK WAS, AND APPLIED IT TO THE ACTUAL STRUCTURE , IF YOU WILL, THAT WAS SET FORTH IN THE PATENT.

THE COURT: BUT IF I HAD -- SO IF I WERE TO ADOPT -- WELL, AS I READ THIS -- I HAVEN'T READ IT AND STUDIED IT -- BUT "MANAGING THE TRANSMISSION," THAT'S A TASK, RIGHT? "MANAGING TRANSMISSION," AND SOMEHOW I COULD FIGURE THAT OUT. "FROM THE BUFFER MEMORY TO THE NETWORK."

SO IT'S GOT MANAGEMENT TASKS IN A PARTICULAR PLACE DOING A PARTICULAR THING. AND SO IF YOU ARE GUIDING ME TOWARD THERE IS A WAY ONE OF SKILL IN THE ART WOULD UNDERSTAND WHAT FRAME TRANSMISSION TASK IS DOING IN CLAIM ONE OF THE '094 PATENT AT A PARTICULAR TIME AND AT A PARTICULAR PLACE, I'M WITH YOU.

MR. HERMAN: AND I WOULD LIKE TO SKIP AHEAD. I REALIZE THAT WE'RE TRYING TO STAY SOMEWHAT ON A TIGHT TIME LINE.

I WOULD LIKE TO SKIP AHEAD AND TALK ABOUT THE PROSECUTION HISTORY AS IT RELATES -- ITS IN THE SAME OFFICE ACTION AS IT RELATES TO THE FRAME TRANSFER TASK, IF I MAY.

WOULD YOU JUMP TO SLIDE 36, PLEASE?

I'M SORRY. IF I COULD BACK UP TO SLIDE 35.

THIS, I THINK, GETS TO YOUR HONOR'S PREVIOUS

QUESTION, WHICH THERE WAS IN THE SAME OFFICE ACTION, THE MARCH 19, 1996 OFFICE ACTION, THE EXAMINER RAISED A QUESTION ABOUT WHERE THE FRAME TRANSFER TASK OCCURS.

AND THE LANGUAGE AT THE TIME SAID THAT:

"EXECUTING A FRAME TRANSFER TASK IN THE HOST SYSTEM."

AND THE EXAMINER IN THE OFFICE ACTION SAID:

"WAIT A MINUTE. THE SPECIFICATION TALKS ABOUT THE EXECUTION OF THIS TASK, AND AN EMBODIMENT SHOWS IT'S HAPPENING IN THE ADAPTER, NOT IN THE HOST. SO I NEED SOME CLARIFICATION."

AGAIN, THE POINT OF THIS PROSECUTION HISTORY IS THAT THE EXAMINER UNDERSTOOD PRECISELY WHAT THE TASKS BEING PERFORMED WERE. BUT HIS QUESTION WAS:

"DOES IT HAVE TO BE IN THE HOST? BECAUSE IF IT IS I DON'T SEE AN EMBODIMENT IN THE PATENT TO SUPPORT THAT."

SO HE ASKED FOR CLARIFICATION.

THE RESPONSE CAME BACK. AND WHAT THE PATENTEE SAID WAS THAT THE FRAME -- ABOUT HALFWAY DOWN:

"TO CLARIFY, THE APPLICANT HAS STATED THAT THE FRAME TRANSFER TASK IS INITIATED IN THE HOST SYSTEM."

AND THAT'S WHERE THAT TERM "INITIATED" CAME INTO THE PATENT. SO INSTEAD OF JUST "IN THE HOST SYSTEM" THEY ADDED THE WORD:

"INITIATED IN THE HOST SYSTEM. OBVIOUSLY, THIS REMOVES THE QUESTION RAISED BY THE EXAMINER AS TO WHAT IS MEANT BY 'EXECUTING' IN THE HOST SYSTEM. THE RESOURCES THAT ACTUALLY CAUSE TRANSFER OF THE FRAME TO THE BUFFER MEMORY MAY RESIDE IN THE HOST OR ON THE ADAPTER. THE PROCESS OF INITIATING THE FRAME TRANSFER TASK IS EXECUTED IN THE HOST."

AND THERE'S SUPPORTING LANGUAGE IN THE PATENT FOR THAT. THAT'S AT COLUMN FOUR, LINE 52. AND IT SPILLS OVER INTO COLUMN FIVE.

"THE FRAME TRANSFER TASK IS THEN EXECUTED" -- AFTER THE INITIATION -- "THE FRAME TRANSFER TASK IS THEN EXECUTED IN PARALLEL WITH THE FRAME TRANSMISSION TASK AS SET FORTH IN THE CLAIM -- AS RECITED IN THE CLAIM."

SO I THINK THAT THIS WORD "INITIATED" THAT YOUR HONOR STRUGGLED WITH IN YOUR FIRST ORDER, I THINK THIS PROSECUTION HISTORY ADDRESSES WHAT IS GOING ON.

THERE IS A TASK INITIATED IN THE HOST, BUT THEN IT'S PERFORMED IN PARALLEL. AND THAT CAN BE EITHER IN THE HOST OR IN THE ADAPTER. BUT IT'S THE WHOLE MOVING OF THE FRAME FROM THE HOST THROUGH THE BUFFER MEMORY OUT TO THE NETWORK AS THESE TWO TASKS ARE PERFORMED.

THE COURT: WELL, I FOUND IT -- I FOUND IT HELPFUL TO LOOK AT THE PROSECUTION HISTORY WITH RESPECT TO THE PHRASE

"FRAME TRANSFER TASK," BECAUSE THERE THE PATENTEE HAD TO RESPOND TO THE OFFICE ACTION AND DID RESPOND BY SAYING THAT THE PHRASE REFERRED TO COMPOSING AN IDENTIFIER, LOADING THE IDENTIFIER. THEY ACTUALLY WENT THROUGH SOME STEPS. AND THAT BECOMES PART OF THE PROSECUTION HISTORY. AND THAT CAN HELP ME DEFINE THAT TERM.

BUT I DIDN'T SEE A COMPARABLE CONVERSATION BETWEEN THE EXAMINER AND THE PATENTEE WITH RESPECT TO "FRAME TRANSMISSION TASK," WHERE THE EXAMINER SAID:

"I DON'T UNDERSTAND WHAT THIS MEANS OR WHERE IT'S PERFORMED. TELL ME SOMETHING ABOUT IT." AND THEN, SOMETHING WAS DELINEATED WHICH BECOMES PART OF THE PROSECUTION HISTORY, WHICH HELPS ME DEFINE IT.

BUT I SEE IT HERE, AND I APPRECIATE IT HERE.

MR. HERMAN: YES.

THE COURT: AND WE'LL COME TO THAT, I GUESS, FORMALLY IN A MOMENT. BUT I DIDN'T WANT TO THE LEAVE "FRAME TRANSMISSION TASK" WITHOUT GETTING YOUR BEST ARGUMENT AS TO WHAT IT MEANS.

NOW, THE BEST ARGUMENT I HAVE IS:

"COMMANDS OR INSTRUCTIONS TO INITIATE TRANSMISSION OF A FRAME."

IS THAT WHERE YOU WOULD WISH ME TO GO?

MR. HERMAN: YES, YOUR HONOR.

THE COURT: OKAY.

MR. HERMAN: THE ONLY PROSECUTION HISTORY ON FRAME TRANSMISSION TASK AS OPPOSED TO FRAME TRANSFER TASK IS -- CAN

YOU GO TO SLIDE 23? AND JUST TO BE CLEAR ABOUT THIS IS WHEN --

THE COURT: SO IT WOULD BE EXECUTING COMMANDS OR INSTRUCTIONS TO INITIATE TRANSMISSION? THIS IS EXECUTING A FRAME TRANSMISSION TASK, RIGHT?

MR. HERMAN: YES, YOUR HONOR. THAT'S RIGHT.

THE COURT: OKAY.

MR. HERMAN: SO THE OFFICE ACTION WHERE -- THAT WE'VE CITED BEFORE, IT SAYS "TASK." IF YOUR HONOR READS THE LANGUAGE IN THE BOTTOM SECTION THERE --

THE COURT: RIGHT.

MR. HERMAN: -- IT SAYS "TASK." BUT IF YOU READ THE LANGUAGE, THE TASK THE EXAMINER IS TALKING ABOUT THERE IS THE FRAME TRANSMISSION TASK, WHICH WE'VE ADDED IN BRACKETS, BECAUSE THAT'S THE EXACT CLAIM LANGUAGE THAT IS CITED AFTERWARDS FOR "FRAME TRANSMISSION TASK."

NOW, THAT WASN'T DIRECTLY RESPONDED TO BY THE PATENTEE OR THE APPLICANT, BUT THE EXAMINER CERTAINLY WHEN HE READ THE PATENT CLAIM, THE PROPOSED CLAIM, HE UNDERSTOOD WHAT IT MEANT.

THE COURT: ALL RIGHT. I'LL GO TO THAT. AND THANK YOU FOR THAT.

HOWEVER, AND PERHAPS JUST IN THE INTEREST OF TIME, CAN I JUMP YOU TO THE DEPENDENT CLAIMS? CLAIMS TWO, THREE, MAYBE FIVE, BUT DEFINITELY TWO AND THREE, ARE THOSE EXAMPLES OF COMMANDS OR INSTRUCTIONS TO INITIATE TRANSMISSION? BECAUSE I

THOUGHT FROM THE DEPENDENT CLAIM I COULD COME TO A GOOD DEFINITION, BECAUSE IF THEY ARE DEPENDING FROM ONE THEY HAVE TO BE INCLUDED IN ONE.

AND SO IF YOU TELL ME THAT EXECUTING A CARRIER SENSE, MULTIPLE ACCESS PROTOCOL," OR "EXECUTING A CARRIER SENSE, MULTIPLE ACCESS WITH COLLISION DETECTION PROTOCOL" ARE EXAMPLES OF COMMAND OR INSTRUCTIONS, WE'RE NOW MOVING IN THE RIGHT DIRECTION BECAUSE -- AND SO WHAT ARE THEY?

MR. HERMAN: YOUR HONOR, THOSE ARE -- AND I'LL SPEAK SPECIFICALLY WITH REFERENCE TO DEPENDENT CLAIM TWO. THE CARRIER SENSE MULTIPLE ACCESS PROTOCOL, THAT'S GOING TO APPEAR IN THE 802.3 STACK.

AND THIS IS IN CONNECTION WITH THE MEDIUM ACCESS TASK. YOU'LL SEE THAT THIS, WHAT'S REFERRED TO IN THE DEPENDENT CLAIM TO THE CSMA.

IF I CAN JUMP AHEAD, THIS IS PART OF THE 802.3 SPECIFICATION. WHAT THE 802.3 SPECIFICATION DOES IS IT PROVIDES FOR A LOT OF THIS FRAMING OF THE DATA AND THE PACKAGING.

THE COURT: RIGHT. BUT SO ARE THOSE -- MY QUESTION IS: IF I AM GOING TO ADOPT FOR DEFINING A FRAME TRANSMISSION TASK, EXECUTING COMMANDS OR INSTRUCTIONS, ARE THE DEPENDENT CLAIMS WHERE IT SAYS:

"WHEREIN, THE FRAME TRANSMISSION TASK INCLUDES EXECUTING THIS PROTOCOL," IS THAT EXECUTING COMMANDS

OR INSTRUCTIONS?

MR. HERMAN: I BELIEVE YOU'RE EXACTLY RIGHT, YOUR HONOR. THOSE ARE SOME OF THE ADDITIONAL INSTRUCTIONS THAT COMPLY WITH THESE PROTOCOLS. THAT'S PART OF THE FRAME PACKAGING. THE FRAME TRANSMISSION WOULD INCLUDE PUTTING IT IN THE PROTOCOL SO THAT WHEN IT GETS TO THE NETWORK THE COMPUTERS ON THE OTHER SIDE WOULD UNDERSTAND WHAT IT MEANS.

THE COURT: ALL RIGHT. NOW, LET ME FRAME THIS QUESTION. SO THEN WHAT I HAVE FOR CLAIMS TWO AND THREE, AT LEAST, AND MAYBE FIVE, I HAVE A FRAME TRANSMISSION TASK THAT INCLUDES A DEFINITION, BECAUSE I'M TOLD OF A PARTICULAR PROTOCOL THAT IS INCLUDED WITHIN WHAT IS CALLED A "FRAME TRANSMISSION TASK." SO THAT THE FRAME TRANSMISSION TASK OF CLAIM ONE IS BROADER THAN THAT, SO FOR ME THE INDEFINITE QUESTION IS: IS IT SUFFICIENTLY NARROW THAT I KNOW WHAT IS INCLUDED AND WHAT IS NOT? SO IF SOMEONE IS INFRINGING, ARE THEY DOING A FRAME TRANSMISSION TASK? BECAUSE IF IT'S UNDEFINED, THEN SOMEONE CAN'T SAY:

"WELL, I NEED TO AVOID THAT."

AND SO "COMMAND" OR "INSTRUCTION" IS VERY BROAD. IT MEANS THAT YOU CAN'T HAVE ANY COMMANDS OR INSTRUCTIONS. AND IN THE TECHNOLOGY OF THIS KIND, MOST EVERYTHING IS DONE THROUGH COMMANDS OR INSTRUCTIONS, AREN'T THEY?

MR. HERMAN: YES, YOUR HONOR. I DON'T -- THESE ARE NOT -- THESE ARE NOT THE POINTS OF NOVELTY OF THIS PATENT.

THESE CONCEPTS, THE TASK TERMS, WERE ALL KNOWN IN THE ART. THE CONCEPT OF HOW TO SEND A DATA FRAME THROUGH THE HOST, THROUGH A BUFFER TO A NETWORK. THAT'S NOT NOVEL. THAT'S NOT PART OF THE NOVELTY OF THE PATENT.

THE WAY IN WHICH IT HAPPENS, THE TIMING OF WHICH IT HAPPENS WHICH ARE PART OF OTHER CLAIM ELEMENTS ARE, INDEED, THE THINGS THAT WE THINK ARE PART OF THE -- INTEGRAL TO THE INVENTION.

THE COURT: ALL RIGHT.

MR. HERMAN: BUT FOLLOWING THESE PROTOCOLS, EITHER THE 802.3, OR IEEE SPEC OR THE ETHERNET PROTOCOL, WE DON'T THINK THAT FOLLOWING THOSE PROTOCOLS IS PART OF THE INVENTION, NECESSARILY, IF THAT MAKES SENSE.

THE COURT: WELL, NOT PART OF THE NOVELTY OF IT, BUT IT'S PART OF THE INVENTION, BECAUSE YOU'RE TELLING ME THAT THOSE ARE A STEP. THAT IS A STEP THAT IS DISCLOSED AS A NECESSARY STEP, BECAUSE I GOT TO EXECUTE A FRAME TRANSMISSION TASK TO INITIATE TRANSMISSION.

SO I GOT TO GO THROUGH THAT BEFORE I INITIATE. AND THE PROTOCOLS YOU'RE TELLING ME ABOUT ARE NECESSARY TO INITIATE TRANSMISSION.

MR. HERMAN: AGREED, YOUR HONOR. YES.

THE COURT: ALL RIGHT. THANK YOU.

MR. HERMAN: AND THEN, I'LL MAKE TWO VERY BRIEF POINTS, AND THEN SIT DOWN.

THE TERM "TASK" AND THE TERM "EXECUTING," I'D LIKE TO COVER THOSE. THE TERM "TASK" IS SOMETHING THAT WOULD BE UNDERSTOOD IN THE ART. THERE'S NO ALLEGATION ANYWHERE THAT I'M AWARE OF THAT THE TERM "TASK" IS INDEFINITE, THAT PEOPLE DON'T UNDERSTAND WHAT "TASK" MEANS.

SO ETHERNET SPECIFICATION USES THE TERM "OPERATION" AS OPPOSED TO "TASK." AND I THINK THAT THAT'S ORDINARY MEANING.

WE'D POINT OUT THAT THE EXAMINER UNDERSTOOD WHAT THE TASK TERMS MEAN. DR. MITZENMACHER, OUR PROPOSED EXPERT, REFERS TO WORK ASSOCIATED WITH COMMANDS OR INSTRUCTIONS.

AND EVEN THE DEFENDANTS, IF YOU READ THEIR 4-2 DISCLOSURES, SEEM TO SAY THAT A TASK ARE INSTRUCTIONS, IN THEIR DEFINITION OF "FRAME TRANSFER TASK."

SO WE DON'T THINK THE TERM "TASK" IS INDEFINITE, NOR IS THE TERM "EXECUTING." THE ETHERNET SPECIFICATION USES "IMPLEMENTS." THE EXAMINER USED THE TERM "PERFORMED." DEFENDANTS THEMSELVES USE THE TERM "PERFORMING" FOR "EXECUTING."

SO WE DON'T THINK THE CONCEPT OF EXECUTING IS INDEFINITE, AND WE DON'T THINK THERE'S BEEN ANY ALLEGATION THAT IT'S INDEFINITE.

THE COURT: LET ME ASK YOU A COUPLE OTHER QUESTIONS BEFORE YOU YIELD THE FLOOR. THIS IS A PATENT CLAIM THAT IS A METHOD FOR TRANSMITTING. AND THERE IS NO EXPLICIT TRANSMITTING STEP THAT I SAW. IN OTHER WORDS, THERE'S NO STEP THAT SAYS "TRANSMITTING." IT DOES GIVE ME A STEP FOR EXECUTING THIS

TRANSFER, FRAME TRANSFER. AND IT GIVES ME A STEP FOR EXECUTING A FRAME TRANSMISSION IN THE NETWORK. BUT WHERE DOES IT TRANSMIT? WHERE IS THE STEP THAT TRANSMITS FROM THE HOST SYSTEM THROUGH A NETWORK INTERFACE?

THE PLACE I THOUGHT THAT MAYBE IT WOULD BE IS 'EXECUTING TO INITIATE TRANSMISSION." BUT THAT WAS FROM THE BUFFER MEMORY TO THE NETWORK IN PARALLEL. SO THAT'S AS CLOSE AS I GOT TO "INITIATE TRANSMISSION."

SO PERHAPS THE INITIATION OF TRANSMISSION I SHOULD READ AS TRANSMITTING?

MR. HERMAN: CORRECT. AND I THINK THE PROSECUTION HISTORY, THE APPLICANT'S STATEMENT THAT WE LOOKED AT A MOMENT AGO, I THINK THAT SPEAKS DIRECTLY TO THAT POINT, YOUR HONOR.

THE COURT: ALL RIGHT. AND SO THE "EXECUTING THE FRAME TRANSMISSION TASK" IS SOMETHING THAT IS DIFFERENT FROM THE "INITIATION OF TRANSMISSION."

MR. HERMAN: CORRECT. AND THIS IS ACTUALLY LAID OUT IN THE PATENT SPECIFICATION. AND IT APPEARS AT COLUMN FOUR, STARTING AT LINE 52.

THE COURT: I DON'T WANT YOU TO GO THROUGH THAT. THE REASON I ASKED THAT IS TO FRAME THE QUESTION WITH RESPECT TO DEPENDENT CLAIM FIVE, BECAUSE IF I ADOPT THE DEPENDENT CLAIMS AS HELPING ME TO DEFINE "FRAME TRANSMISSION TASK," THEN I CONFRONTED CLAIM FIVE, WHICH IS:

"WHEREIN THE FRAME TRANSMISSION TASK INCLUDES

APPENDING AN ERROR DETECTION CODE TO THE FRAME OF DATA TO BE TRANSMITTED TO THE NETWORK."

IN A SYSTEM THAT CLAIMS TRANSMISSION TO START PRIOR TO THE COMPLETION OF THE TRANSFER IS IT CONSISTENT THAT I CAN APPEND AN ERROR DETECTION CODE TO THE FRAME IF THE FRAME IS STARTING TO BE TRANSMITTED BEFORE I COMPLETED THAT STEP OF APPENDING THE ERROR CODE? BECAUSE MY UNDERSTANDING WAS THAT I NEEDED TO KNOW THE FRAME IN ORDER TO COMPOSE THE ERROR CODE.

SO IF PART OF IT'S ALREADY GONE, HOW CAN I KNOW WHAT THE ERROR CODE WOULD BE?

MR. HERMAN: AND I THINK THE 802.3 SPECIFICATION SPEAKS TO THIS. THE PACKAGING, THE WAY THAT A DATA MESSAGE IS SENT, THERE'S THE PAYLOAD, WHICH WOULD BE THE ACTUAL DATA THAT CAME FROM THE HOST GETS PUT INTO A PACKAGING FORMAT. AND THAT PACKAGING FORMAT HAS AN ADDRESS WHERE IT'S GOING. IT MAY HAVE AN ERROR REDUNDANCY CHECK. IT MAY HAVE A FEW STANDARDIZED THINGS THAT THE ETHERNET PROTOCOL WOULD REQUIRE.

ALL THAT PACKAGING CAN TAKE PLACE LONG BEFORE THEY GET THE DATA FROM THE HOST COMPUTER. SO IT WOULD BE SIMILAR TO ADDRESSING AN ENVELOPE BEFORE YOU STICK THE LETTER IN IT.

THE COURT: THE ERROR CODE THEN WOULD BE FOCUSSED PURELY ON THE PACKAGE, NOT THE DATA.

MR. HERMAN: CORRECT.

THE COURT: I THOUGHT THE ERROR CODE WAS DESIGNED TO ENSURE THAT I GOT ALL THE DATA I WAS SUPPOSED TO GET. AND SO IF

I CAN DO IT WITHOUT THE DATA DOESN'T REALLY FUNCTION VERY WELL AS AN ERROR CODE.

MR. HERMAN: IT WOULD JUST BE THE SIZE. I THINK THE ONLY INFORMATION THEY WOULD NEED WOULD BE THE SIZE OF THE FRAME, WHICH ARE STANDARDIZED IN MANY CASES.

THE COURT: ALL RIGHT. THANK YOU.

MR. HERMAN: THANK YOU, YOUR HONOR.

MR. STEPHENS: GOOD MORNING, YOUR HONOR. GARLAND STEPHENS FOR INTEL CORPORATION. I JUST HAVE A FEW INTRODUCTORY REMARKS. THEN, I'M GOING TO TURN OVER THE SUBSTANCE OF THE TASK RESPONSE TO MR. CORDELL.

THE COURT: VERY WELL.

MR. STEPHENS: SO, YOUR HONOR'S PRESENTED WITH A FEW ISSUES TODAY. MOST OF THEM RELATE TO MEANS-PLUS-FUNCTION. WE HAVE THE LOGIC TERM ISSUE, WHETHER OR NOT THEY ARE GOVERNED BY 112-6.

THEN, WE HAVE THE QUESTION OF WHETHER SOME TERMS THAT ARE GOVERNED BY 112-6 ARE INDEFINITE BECAUSE THEY DON'T COMPLY WITH THE REQUIREMENT UNDER 112-6 THAT YOU DISCLOSE A STRUCTURE FOR PERFORMING A FUNCTION RECITED IN THE CLAIM.

AND THEN FOR ANY CLAIMS THAT ARE NOT INDEFINITE, YOUR HONOR HAS -- NEEDS TO DECIDE WHAT STRUCTURE ACTUALLY CORRESPONDS TO THE FUNCTIONS RECITED IN THOSE LIMITATIONS.

AND THEN, FINALLY, WE HAVE THE SEPARATE ISSUE OF INDEFINITENESS LIKE THE ONE THAT WAS JUST ADDRESSED THAT DOES

NOT RELATE TO 112-6. IT'S JUST A QUESTION OF WHETHER THE TERM IN THE CLAIM IS UNDERSTANDABLE AND NOT INDEFINITE.

NOW, WE AGREED WITH THE PLAINTIFFS TO ARGUE IN THE ORDER THAT THEY SUGGESTED OR INSISTED ON, BUT WE ACTUALLY THINK THERE'S A BETTER WAY TO APPROACH THE ISSUES BEFORE THE COURT, AND THAT IS DRIVEN BY THE DISCLOSURES OF THE SPECIFICATION.

SO IF YOU LOOK AT THE CLAIMS AND THE TERMS THAT ARE AT ISSUE, THEY FALL INTO FOUR LOGICAL GROUPS. THERE ARE A NUMBER OF TERMS THAT RELATE TO THE HOST INTERFACE.

THERE A NUMBER THAT RELATE TO THE NETWORK INTERFACE. AND THEN, THERE ARE A NUMBER THAT RELATE TO THIS THRESHOLD FUNCTIONALITY THAT'S DESCRIBED. AND THEN, FINALLY, THERE ARE THE TASK TERMS THAT THE PLAINTIFFS WANTED TO THE START WITH.

BECAUSE THERE'S A LOT OF TERMS AND THERE'S A LOT OF ISSUES, WE'VE PROVIDED IN OUR PRESENTATION, WHICH YOUR HONOR HAS A HARD COPY OF, A CHART THAT SHOWS YOU HOW THOSE SPECIFIC DISPUTES MAP ONTO THE MANY DIFFERENT LIMITATIONS THAT ARE BEFORE THE COURT. JUST A HANDY REFERENCE TO SEE WHAT ISSUES RELATE TO WHICH CLAIMS.

I WANTED TO JUST TOUCH BRIEFLY ON A LITTLE BIT OF CONTEXT. AGAIN, THESE CLAIMS RELATE TO NETWORK ADAPTERS WHICH SIT BETWEEN THE NETWORK AND THE COMPUTER. YOU CAN TELL THAT BECAUSE THE OVERWHELMING MAJORITY OF THE DISCLOSURE, INCLUDING ALMOST ALL OF THE FIGURES, RELATE TO THINGS THAT WOULD BE FOUND INSIDE THAT NETWORK ADAPTER.

AND, YOUR HONOR, THESE FIGURES THAT ARE FOUND IN MOST OR ALL OF THE PATENTS -- IT VARIES A LITTLE BIT -- ARE YOUR BEST GUIDE TO APPROACHING THE DISPUTES THAT ARE BEFORE THE COURT, BECAUSE THE FOUR DIFFERENT KINDS OF DISPUTES, WITH THE EXCEPTION OF THE TASK TERMS, MAP DIRECTLY ONTO THE FIGURES.

SO THE EASIEST WAY TO APPROACH THE ISSUES, WE SUGGEST, IS TO TAKE A LOOK AT THE FIGURES, FIND THE LANGUAGE AND THE FIGURES THAT CORRESPONDS TO THE PARTICULAR ISSUE, AND THEN LOOK FOR THE SPECIFICATION LANGUAGE THAT RELATES TO THOSE PARTICULAR FIGURES.

JUST A QUICK REMINDER ABOUT WHAT EACH PATENT IS ABOUT. THE '459 PATENT IS ABOUT GENERATING AN INTERRUPT EARLIER THAN IT MIGHT OTHERWISE BE GENERATED.

ACCORDING TO THE PATENT, IN PRIOR ART SYSTEMS AN INTERRUPT WAS GENERATED BY AN ADAPTER TO THE HOST PROCESSOR AFTER DATA HAD ALREADY BEEN MOVED COMPLETELY EITHER INTO THE BUFFER OR INTO THE HOST SYSTEM.

QUICK ANIMATION. I'M NOT GOING TO HAVE ANYMORE OF THESE IN THE INTRODUCTION. JUST TO ILLUSTRATE THE CONTEXT THAT WE'RE TALKING ABOUT.

THERE'S A FRAME COMING IN FROM THE WIRE, GOES INTO THE BUFFER. MOVED BY THE NETWORK ADAPTER CARD INTO THE HOST MEMORY FROM THE BUFFER. AFTER THAT IS DONE, AN INTERRUPT IS SENT SO THAT THE PROCESSOR CAN PROCESS THE FRAME.

JUST A LITTLE CONTEXT, YOUR HONOR, FOR THE DISPUTES

THAT ARE BEFORE YOU TODAY.

THE '872 AND '094 PATENTS RELATE TO A SIMILAR ISSUE, BUT IN THE OTHER DIRECTION. THEY DON'T INVOLVE INTERRUPTS. THEY INVOLVE TRANSMITTING, ACCORDING TO THESE PATENTS. IN THE PRIOR ART THE FRAME WAS COMPLETELY DOWNLOADED INTO THAT BUFFER MEMORY THAT WE SAW IN THE ADAPTER BEFORE IT WAS TRANSMITTED INTO THE NETWORK.

AND THOSE PATENTS PURPORT TO SOLVE THAT PROBLEM BY STARTING THE TRANSMISSION A LITTLE BIT EARLY.

'313 PATENT'S A LITTLE DIFFERENT THAN THE OTHERS, ALTHOUGH THE SPECIFICATION OF THE '313 PATENT IS FOUND ALMOST IN ITS ENTIRETY IN THE OTHER THREE PATENTS. IT PURPORTS TO SOLVE AN ALLEGED PROBLEM IN THE PRIOR ART IN WHICH HOST SYSTEMS PERFORMED A FAIR AMOUNT OF BUFFER MANAGEMENT IN HOST SYSTEM MEMORY AS OPPOSED TO ALL THAT MANAGEMENT BEING DONE BY THE ADAPTER CARD IN ITS OWN MEMORY.

RETURNING TO THE FIGURES, IF YOU LOOK AT THIS FIGURE TWO, WHICH IS FOUND IN THREE OF THE FOUR PATENTS, IT'S NOT FOUND IN THE '313, ALL OF THE ISSUES EXCEPT FOR THE TASK TERMS CAN BE SORT OF MAPPED RIGHT ONTO THAT FIGURE.

YOU HAVE THE HOST INTERFACE LOGIC, NETWORK INTERFACE LOGIC AND THRESHOLD LOGIC. THAT'S THREE OF THE FOUR CATEGORIES.

THE TASK TERMS YOU WON'T FIND IN ANY OF THE FIGURES BECAUSE THEY ARE JUST NOT DISCLOSED ANYWHERE IN ANY OF THE PATENTS. THESE FIGURES AND THESE TERMS MATCH UP WITH THE

DISPUTES BEFORE THE COURT BECAUSE THEY MATCH UP WITH CLAIM TERMS.

NOW, I'VE HIGHLIGHTED "BUFFER" HERE BECAUSE IT APPEARS IN ALMOST ALL THE CLAIMS BEFORE YOUR HONOR. BUT IT'S NOT REALLY ONE THAT IS DISPUTED HERE TODAY. YOU RESOLVED THE DISPUTES WE HAD ABOUT THE MEANING OF "BUFFER MEMORY" IN THE LAST ROUND.

IT'S HELPFUL, I THINK, TO LOOK AT HOW THESE FIGURES RELATE TO EACH OTHER. IT'S NOT AT ALL OBVIOUS AT A QUICK GLANCE AT THESE PATENTS WHAT THE RELATIONSHIP BETWEEN THESE FIGURES IS.

FIGURE THREE THERE IN THE UPPER LEFT CORNER IS FOUND IN ALL FOUR PATENTS. AND EVEN THOUGH FIGURE TWO IS NOT FOUND IN ALL FOUR PATENTS -- IT'S FOUND IN THREE -- BUT THEY ARE VERY CLOSELY-RELATED, EVEN THOUGH, AGAIN, IT MAY NOT BE IMMEDIATELY OBVIOUS.

THE ADAPTER MEMORY SHOWN IN GREEN IN FIGURE THREE IS THE SAME STRUCTURE, THE SAME BUFFER MEMORY THAT'S SHOWN IN GREEN IN FIGURE TWO. AND, SIMILARLY, THAT BLOCK, EVEN THOUGH IT'S NOT LABELED HOST INTERFACE LOGIC IN THE FIGURE ITSELF, THE SPECIFICATIONS CLEARLY SAY IT IS THE HOST INTERFACE LOGIC. SO IT CORRESPONDS TO THE LEFT SIDE OF THE FIGURE TWO, AS WELL.

SAME THING FOR THE NETWORK INTERFACE LOGIC SHOWN IN PURPLE. THAT CORRESPONDS TO THE NETWORK INTERFACE LOGIC IN THE FIGURE TWO. AND THIS SORT OF GENERAL ARRANGEMENT OF THE HOST INTERFACE ON THE LEFT, A BUFFER IN THE MIDDLE, AND THE NETWORK

INTERFACE ON THE RIGHT, THAT'S COMMON THROUGHOUT THESE PATENTS IN MANY OF THE FIGURES.

SO THE HOST ADAPTER ADDRESS SPACE IS SHOWN ON THE LEFT, TYPICALLY, OR THE HOST SYSTEM IN SOME CASES. THEN, YOU HAVE THE HOST INTERFACE BETWEEN IT AND THE BUFFER MEMORY, AGAIN ON THE LEFT SIDE. AND THEN, YOU HAVE ON THE RIGHT SIDE THE NETWORK INTERFACE BETWEEN THE BUFFER AND THE NETWORK.

THAT'S SORT OF THE OVERALL ARCHITECTURAL ORGANIZATION OF WHAT IS DISCLOSED IN ALL FOUR PATENTS. THAT CARRIES ON TO SOME FIGURES THAT ARE EVEN A LITTLE LESS OBVIOUS TO INTERPRET.

FIGURE NINE IS AN EXAMPLE WHICH BASICALLY JUST PROVIDES MORE DETAIL FOR WHAT YOU SEE AS THE HOST INTERFACE LOGIC AND THE NETWORK INTERFACE LOGIC IN FIGURES TWO AND THREE.

AGAIN, THE MEMORY IS SHOWN IN THE MIDDLE IN GREEN IN FIGURE NINE THERE. AND FIGURE NINE SHOWS THE STRUCTURES THAT ARE USED IN THE RECEIVE PROCESS. FIGURE 11 IS VERY SIMILAR IN THAT IT SHOWS THE STRUCTURES OR THE LOGIC, I GUESS I SHOULD SAY, THAT'S DESCRIBED FOR THE -- I'M SORRY, THE RECEIVE PROCESS, FIGURE NINE IS THE TRANSMIT PROCESS. I THINK THAT I HAD THAT BACKWARDS.

BUT, AGAIN, WHAT YOU'LL FIND IS THAT FOR THE RECEIVE FUNCTION IN FIGURE THREE THERE, THAT'S ON THE LOWER HALF. SO THE RECEIVE DMA LOGIC CORRESPONDS TO THE BLOCK 110 THERE IN THE LOWER HALF OF THE RIGHT SIDE, THE NETWORK INTERFACE.

THE LEFT SIDE OF FIGURE 11 CORRESPONDS TO THE LOWER

HALF OF THE LEFT SIDE OF FIGURE THREE. SO THE UPLOAD DMA LOGIC AND THE PREVIEW LOGIC THERE CORRESPOND TO THE THINGS THAT ARE SHOWN IN BLOCK 100. JUST SORT OF A LITTLE TOUR OF THE FIGURES TO HELP YOUR HONOR UNDERSTAND THE STRUCTURE OF THE DISCLOSURES.

ONE THING I WANT TO POINT OUT QUICKLY BEFORE TURNING IT OVER TO MR. CORDELL, IS THAT THAT DIFFERENCE IN THE NATURE OF THE DISCLOSURES.

SO THESE HOST INTERFACE AND NETWORK INTERFACE ELEMENTS ARE JUST PURELY FUNCTIONAL. THIS IS A TYPICAL DISCLOSURE. JUST THE BOX WITH THE FUNCTION IN IT. SOMETIMES WITH THE WORD "LOGIC" ATTACHED.

IT'S VERY DISTINCT FROM THE DISCLOSURE OF THE THRESHOLD ELEMENTS THAT WE'RE GOING TO TALK ABOUT IN MORE DETAIL LATER. THEY ARE DESCRIBED IN GREAT DETAIL.

THIS '459 PATENT USES SIX FIGURES TO DISCLOSE THE RECEIVE THRESHOLD LOGIC. AND THEY HAVE A WIDE VARIETY OF PRETTY STRUCTURAL DESCRIPTIONS: CIRCUITRY, STATE DIAGRAMS, ALGORITHMS.

THIS IS JUST AN EXAMPLE OF THE KIND OF CIRCUITRY YOU SEE THERE. SO THERE'S A REAL QUALITATIVE DIFFERENCE IN THE TYPE OF DISCLOSURE BETWEEN THE INTERFACE TERMS THAT ARE AT ISSUE BEFORE THE COURT, AND THE THRESHOLD TERMS AT ISSUE.

AND WITH THAT, I'LL TURN IT OVER TO MR. CORDELL, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. CORDELL: GOOD MORNING, YOUR HONOR. RUFFIN

CORDELL FOR INTEL.

I'D LIKE TO DIVE INTO THE TASK TERMS, BUT I THINK THERE IS A LITTLE BIT OF A FUNDAMENTAL DISCONNECT BETWEEN THE PARTIES AS TO HOW WE'RE TREATING THIS.

IN THE FIRST CLAIM CONSTRUCTION PROCESS WE EXPLORED THE PLAIN MEANING OF THE TERM "FRAME TRANSMISSION TASK."

WE EXPLORED WHETHER OR NOT IT WAS DEFINED IN THE SPECIFICATION OR IN THE CLAIMS THEMSELVES. AND THE COURT, I THINK, CORRECTLY CONCLUDED THAT IT WAS NOT. AND, IN FACT, WE HAD A -- WE HAVE THE COURT'S ORDER WHERE THE JUDGMENT WAS MADE VERY DISTINCTLY THAT, IN FACT, FRAME TRANSMISSION TASK IS NOT DEFINED IN CLAIM ONE. IT'S NOT USED IN THE WRITTEN DESCRIPTION, AND IT CARRIES NO PLAIN MEANING.

AND SO WHERE THE COURT TOOK US, I THINK, AGAIN, CORRECTLY, ACCORDING TO THE CASE LAW, IS TO ASK WHETHER ONE OF ORDINARY SKILL IN THE ART WOULD UNDERSTAND THE BOUNDS OF THE CLAIMS NEVERTHELESS, NOTWITHSTANDING THE FACT THAT THERE'S NO PLAIN MEANING, NOTWITHSTANDING THE FACT THAT IT WASN'T DEFINED.

AND SO WE LOOK BACK TO THE OTHER CASES, THE COURT'S DECISION IN THE ACACIA MATTER FROM A FEW YEARS BACK WHERE THE PARTIES ENGAGED IN A LITTLE BIT OF SLEUTHING TO TRY TO DISCERN THE MEANING, TO DISCERN THE BOUNDARIES OF THOSE CLAIMS.

AND THAT'S THE PROCESS THAT WE BELIEVE THAT WE'RE HERE TODAY TO DO.

IT'S UNDISPUTED THAT INTEL, DIGITAL AND XEROX

DEVELOPED ETHERNET. THEY DEVELOPED ETHERNET STANDARD. AND THAT WAS LONG BEFORE THESE PATENTS EVER CAME ALONG.

THE QUESTION IS NOT WHETHER CERTAIN TERMS WERE USED IN THAT STANDARD. THE QUESTION IS WHETHER THOSE TERMS WOULD FALL WITHIN THESE CLAIMS. WE NEED TO DISCERN THOSE BOUNDARIES. WE NEED TO GET THE PUBLIC THE NOTICE THEY ARE ENTITLED TO AS TO THE PROPER SCOPE OF THESE CLAIMS.

AND THAT'S THE PROCESS THAT WE'RE ENGAGED IN. SO WITH THAT, WE LOOKED BACK AT THE INTRINSIC RECORD, AND WE LOOKED FOR THOSE CLUES. WE LOOKED FOR HINTS THAT MIGHT HELP US DEFINE WHAT THE PROPER BOUNDARIES OF THE '094 WOULD BE.

AND, UNFORTUNATELY, IT'S SILENT. THE TERMS "FRAME TRANSMISSION TASK" JUST DON'T APPEAR. AND I UNDERSTOOD COUNSEL'S ARGUMENT EARLIER TODAY WITH RESPECT TO THE PROSECUTION HISTORY. THAT'S A NEW ONE. I'VE BEEN STUDYING AS I GO.

BUT THE REALITY IS IF WE LOOK AT THAT VERY CAREFULLY YOU'LL SEE THAT EVEN THAT DOESN'T GIVE US THE DEFINITIONAL CLUES THAT THEY ARE RELYING ON.

I WONDER IF I CAN GO TO THAT. COULD I HAVE SLIDE 19 FROM THE PLAINTIFF'S PRESENTATION?

THERE WE GO. SO THIS WAS THE ARGUMENT, YOUR HONOR. AND, AGAIN, I APOLOGIZE BECAUSE THIS WAS THE FIRST TIME THAT I HAD SEEN THIS. AND, ESSENTIALLY, WHAT COUNSEL SAID IS THAT THIS GIVES US ONE OF THOSE CLUES. THIS GIVES US SOME DEFINITIONAL INSIGHT INTO THE BOUNDARIES OF FRAME TRANSMISSION TASK.

BUT LOOKED AT VERY CAREFULLY, WHAT HAPPENED HERE WAS THAT THE EXAMINER SAID:

"YOU CAN'T HAVE THIS NEW CLAIM IN THE '094 PATENT BECAUSE THE '872 PATENT ALREADY COVERED THIS SUBJECT MATTER."

HE WAS MAKING A DOUBLE PATENTING REJECTION ON AN OBVIOUSNESS-BASED DOUBLE PATENTING REJECTION THAT WAS PREMISED ON A JUDICIALLY CREATED DOCTRINE THAT SAYS YOU CAN'T PATENT THE SAME THING TWICE. AND, ESSENTIALLY, IT'S TO AVOID PEOPLE EXTENDING THEIR RIGHTS BY REPATENTING THE SAME SUBJECT MATTER.

ALL THE EXAMINER SAYS HERE IS THAT THE A OUT OF CLAIM 21 MIGHT BE INCLUDED WITHIN THE SCOPE OF PREVIOUSLY ISSUED CLAIM 24 FROM THE '872 PATENT. THAT'S ALL HE SAYS.

THE ELLIPSIS THAT COUNSEL POINTED OUT FIRST REALLY GOT MY ATTENTION, AND I WAS QUITE EXCITED ABOUT IT WHEN I SAW HE INSERTED THE WORDS "FRAME TRANSMISSION TASK" INTO THE PHRASE, BECAUSE THAT DOES NOT APPEAR. THE WORD "FRAME TRANSMISSION TASK" DOES NOT APPEAR IN THAT OFFICE ACTION.

IN FAIRNESS, THE EXAMINER WAS REFERRING TO THE PHRASE OUT OF THE CLAIM WHICH DOES INCLUDE IT. BUT JUST TO BE CLEAR, THAT WAS ADDED BY PLAINTIFFS. THAT DOESN'T EXIST.

BUT THE BIGGER POINT, THE BIGGER POINT IS THAT ALL HE IS SAYING HERE IS THAT CLAIM 21 OF THE PATENT -- THIS WOULD BE THE '872 PATENT -- INCLUDES A MEDIUM ACCESS CONTROLLER THAT SOMEHOW INCLUDES THIS SUBJECT MATTER.

SO THE BEST CLUE WE CAN TAKE FROM THIS, THE ONLY INTERPRETATIVE POINT WE CAN TAKE FROM THIS IS THAT SOMEHOW A FRAME TRANSMISSION TASK IS SUBSUMED WITHIN THE MEDIUM ACCESS CONTROLLER, WHICH WE ALSO BELIEVE IS AN UNDEFINED TERM.

SO WE HAVE TWO REAL PROBLEMS WITH THIS. NUMBER ONE, IT'S CIRCULAR. ALL WE HAVE IS IT POINTS US BACK TO ANOTHER UNDEFINED TERM IN A DIFFERENT PATENT.

BUT MORE THAN THAT, YOUR HONOR, IT DOESN'T TELL US WHAT THE BOUNDARIES OF THAT FRAME TRANSMISSION TASK REALLY ARE.

I WAS GOING TO ADDRESS EACH OF THESE POINTS IN TURN: INTRINSIC RECORD, EXPERT TESTIMONY, AND THEN EXAMINING THE USEI CONSTRUCTION ITSELF.

I'M A LITTLE UNCLEAR AS TO THE RELIANCE OF USEI ON ITS EXPERT. WE BELIEVE THAT EXPERT TESTIMONY HERE IS INAPPROPRIATE. WE BELIEVE THE CASE LAW IS VERY, VERY CLEAR THAT IF YOU COIN A TERM -- "FRAME TRANSMISSION TASK," I THINK WE'VE GOTTEN TO THAT POINT IS A COINED TERM -- IT IS THE PATENTEE'S OBLIGATION TO DEFINE IT WITHIN THE SPECIFICATION ITSELF. YOU CAN'T GO OUTSIDE THE FOUR CORNERS OF THE PATENT TO DEFINE A COINED TERM.

THE COURT: YOU'RE PROBABLY GOING TO COME TO IT, BUT I THOUGHT IT MIGHT BE PROFITABLE TO HEAR YOUR RESPONSE TO THE COURT'S INQUIRY AS TO WHETHER OR NOT THE DEPENDENT CLAIMS FROM CLAIM ONE, WHICH DO USE "WHEREIN" PHRASES TO GIVE FURTHER DEFINITION TO FRAME TRANSMISSION TASK CAN BE A PLACE TO START,

AT LEAST, IN TRYING TO DEFINE "FRAME TRANSMISSION TASK."

MR. CORDELL: I DO BELIEVE THAT, YOUR HONOR, THEY CAN PROVIDE AGAIN THESE INTERPRETATIVE CLUES THAT WOULD TELL US WHAT THE BOUNDARIES OF FRAME TRANSMISSION TASK ARE.

THE COURT: MORE THAN INTERPRETATIVE CLUES. I MEAN, THEY ARE DEPENDENT CLAIMS, SO THAT THIS IS SOMETHING THAT, BY DEFINITION, IS ALREADY INCLUDED IN CLAIM ONE.

MR. CORDELL: CORRECT. AND, IN FACT, WE KNOW THAT THE FRAME TRANSMISSION TASK MUST HAVE SOME CARRIER SENSE FUNCTIONALITY. WE KNOW THAT BECAUSE OF THE DEPENDENT CLAIM.

BUT WE ALSO KNOW BY CLAIM DIFFERENTIATION THAT IT MUST BE MORE THAN THAT. IT CAN'T --

THE COURT: YES. BUT IT WOULD BE -- MAYBE I SHOULD GET YOUR ANSWER TO THE QUESTION I ASKED YOUR OPPONENT: ARE THE PROTOCOLS THAT ARE RECITED IN CLAIMS TWO AND THREE, AT LEAST, COMMANDS OR INSTRUCTIONS THAT ARE ONE OF SKILL WOULD UNDERSTAND WOULD BE USED TO INITIATE TRANSMISSION?

MR. CORDELL: COMMANDS OR INSTRUCTIONS IS USEI'S FORMULATION. WE DON'T AGREE THAT THAT'S AN APPROPRIATE WAY TO DEFINE "FRAME TRANSMISSION TASK." THE CLAIM ITSELF TALKS ABOUT THE FRAME TRANSMISSION TASK IS SOMETHING THAT OCCURS IN FIXING TIME POINTS.

RECALL THAT THE WAY THE CLAIM WORKS IS THAT THE FRAME TRANSFER TASK MUST BE DONE IN PART IN PARALLEL WITH THE FRAME TRANSMISSION TASK. SO PART OF OUR DEFINITIONAL DIFFICULTY HERE

IS THAT WE NEED TO FIX THE TIME POINTS FOR THE FRAME TRANSMISSION TASK. COULD THE CARRIER SENSE MULTIPLE ACCESS PROTOCOL THAT'S REQUIRED BE PART OF THAT PROCESS? YES.

DOES IT TELL US IS THAT A COMMAND? I DON'T THINK SO. I DON'T THINK THAT THAT'S THE APPROPRIATE WAY TO DEFINE THE TASK BECAUSE, AT LEAST AS I READ THE PATENT, AS I UNDERSTAND THESE CLAIMS, THE TASK IS MEANT TO BE A PROCESS OF SOME KIND. I SUPPOSE THE INITIATION OF CARRIER SENSE, YOU COULD CALL IT A COMMAND MIGHT BE PART OF THAT. BUT THE FORMULATION OF COMMANDS OR INSTRUCTIONS ARE REALLY THE PLAINTIFF'S RATHER THAN OURS.

THE COURT: LET ME SEE IF I CAN GIVE THAT BACK TO YOU. SO YOU AGREE THAT THOSE PROTOCOLS WOULD BE EXAMPLES OF COMMANDS OR INSTRUCTIONS?

MR. CORDELL: THE PROTOCOLS THEMSELVES IN THE MOST PRISTINE FORM ARE PART OF THE STANDARD THAT TELL YOU WHAT YOU NEED TO DO. WOULD YOU CALL THAT A COMMAND? I'M NOT QUITE SURE? I'M NOT QUITE SURE. THAT'S THE PART THAT I DISAGREE WITH.

THE COURT: YOU CALL IT AN INSTRUCTION.

MR. CORDELL: AGAIN, TO ME, AN INSTRUCTION TO ME IS ADDED. IT'S EXCLUSIVE OR IT'S SOMETHING THAT IS WELL-DEFINED. MR. STEPHENS SUGGESTS CALL IT "BEHAVIORS" RATHER THAN A COMMAND OR INSTRUCTION. IT'S SOMETHING THAT MUST BE DONE.

YOU KNOW, I MUST EAT LUNCH. DOES THAT MEAN -- IS THAT A COMMAND? YOU KNOW, I SUPPOSE IT COULD BE. BUT IT'S CHEW, THAT WOULD BE A COMMAND. THE OVERALL PROCESS IS A LITTLE BROADER

THAN THAT.

THE COURT: ALL RIGHT. SO I'M A LITTLE LOST, BUT --

MR. CORDELL: WELL, I --

THE COURT: -- I THINK I HAVE -- I WAS TRYING TO MAKE SURE I WAS COMPARING POSITIONS. AND SO IF YOU TELL ME THAT THIS PROTOCOL IS NOT SOMETHING ONE OF SKILL IN THE ART WOULD UNDERSTAND TO BE COMMANDS OR INSTRUCTIONS, THAT HAS MEANING TO ME, AND I'VE GOT TO FIGURE THAT OUT.

IF YOU TELL ME THAT IT COULD BE, BUT IT NEEDS TO BE A LITTLE MORE PRECISE, WHICH IS WHAT I HEAR YOU SAYING, THAT ALSO WOULD HAVE MEANING TO ME. BUT IT SEEMS TO ME THAT IF I HAVE A WHEREIN CLAUSE IN A DEPENDENT CLAIM AS A MATTER OF CLAIM CONSTRUCTION I'M GOING TO HAVE A DIFFICULT TIME SAYING:

"I DON'T HAVE SOMETHING THAT WILL HELP ME DEFINE WHAT THE TASK IS, BECAUSE IT SAYS 'WHEREIN THE TASK IS X.'"

IT SHOULD BE A MORE LIMITED THING, OF COURSE. AND SO PERHAPS YOUR POINT IS -- I'M TRYING TO SEE WHETHER I'M ADDING SOMETHING INTO THE FRAME TRANSMISSION TASK THAT HAS NOTHING TO DO WITH A COMMAND OR INSTRUCTION.

MR. CORDELL: SO, AGAIN, THE PLACE WHERE I DEPARTED, CARRIER SENSE IS VERY WELL KNOWN. IT'S VERY WELL-ESTABLISHED. IT'S BEEN AROUND FOREVER. AND IT IS A PROCESS THAT HAS TO BE UNDERTAKEN. SO IT IS A FUNCTION HAS TO BE IMPLEMENTED. DO YOU CALL THAT A COMMAND? I'M SURE IF YOU STUDIED THE LITERATURE YOU

WOULD FIND SOMEPLACE SOMEWHERE WHERE SOMEONE SAYS:

"THIS IS MY ROUTINE FOR CARRIER SENSE, AND THERE ARE A SET OF INSTRUCTIONS OR COMMANDS THAT PERFORM THAT FUNCTION."

TO ME, IT'S BROADER THAN A COMMAND. YOU CALLING CARRIER SENSE A COMMAND WOULD SUGGEST --

THE COURT: WELL, IT SOUNDS ALSO AS THOUGH YOU ARE AGREEING THAT IF YOU ARE EXECUTING THIS TRANSMISSION IN A PARTICULAR ENVIRONMENT, ETHERNET OR WHATEVER, IT WOULD MAKE SENSE TO CALL OUT THESE PROTOCOLS AS WAYS TO DO IT.

MR. CORDELL: THE CLAIM TELLS US THAT WHATEVER FRAME TRANSMISSION TASK IS IT INCLUDES THESE PROTOCOLS. AND THAT'S NOT A SURPRISE. THOSE ARE VERY WELL-ESTABLISHED ETHERNET PROTOCOLS.

THE COURT: ALL RIGHT. SO THEN PERHAPS I WOULD HAVE YOU SPEND YOUR TIME TELLING ME WHY, THEN, SOMETHING BROADER THAN THOSE, PRESUMING THEY ARE INCLUDED IN THE STACK, BUT THE CLAIM ONE IS SOMETHING BROADER THAN THAT, WHY I CAN'T FIND AS A DEFINITION SOMETHING THAT TELLS ME WHAT IS, WHICH INCLUDES THESE PROTOCOLS AS WELL AS -- I DON'T KNOW WHATEVER WORDS I'D USE -- BUT NECESSARY TO INITIATE TRANSMISSION.

I THOUGHT PART OF MY PROBLEM WAS TO FIGURE OUT HOW THE PROTOCOLS INITIATED TRANSMISSION. BUT IF YOU TELL ME THAT THEY ARE NECESSARY BECAUSE YOU HAVE TO PACKAGE IT IN SOME WAY IN ORDER FOR THE TRANSMISSION TO MAKE SENSE TO WHEREVER IT'S GOING,

THAT THEN I'VE GOT TO FALL BACK ON: IS IT SO BROAD THAT I CAN'T TELL WHAT ELSE IS LIKE THAT? WHAT ELSE IS LIKE THE PROTOCOLS THAT WOULD MAKE THE GENERAL TERM "FRAME TRANSMISSION TASK" HAVE MEANING?

MR. CORDELL: I TAKE A LOT OF CONFIDENCE FROM THE COURT'S DECISION IN THE ACACIA CASE. SO IF YOU RECALL THERE THE TERM THERE WAS "SEQUENCE ENCODER." AND THE COURT LOOKED AT LOTS OF DIFFERENT WAYS TO LEND DEFINITION TO THAT TERM, AGAIN TRYING TO FIND THE METES AND BOUNDS OF THAT TERM.

ONE OF THE SUGGESTIONS I BELIEVE WAS "TIME ENCODER" BECAUSE THAT WAS DISCLOSED IN THE PATENT. AND IT BECAME CLEAR THAT THE TIME ENCODER WAS PART OF THE SEQUENCE ENCODER, BUT THAT DIDN'T GIVE YOU THE DEFINITION. BECAUSE HERE, WHILE CARRIER SENSE MULTIPLE ACCESS PROTOCOL IS SOMETHING THAT YOU WOULD HAVE TO DO, REMEMBER THAT THE FRAME TRANSMISSION TASK OVERALL IS MUCH BROADER THAN THAT. IT'S SOMETHING THAT STARTS THE PROCESS, WE KNOW THAT.

WE KNOW IT IS NOT THE TRANSMISSION OF THE FRAME. SO WE HAVE CLUES AS TO WHAT IT MIGHT BE. BUT WE NEED TO BE ABLE TO FIX THOSE TIME POINTS IN ORDER TO MAKE IT WORK WITHIN THE CLAIM AND GIVE IT DEFINITION.

WE NEED TO BE ABLE TO JUDGE WHETHER THE FRAME TRANSFER TASK IS BEING JUDGED IN PARALLEL WITH THE FRAME TRANSMISSION TASK.

THE COURT: WELL, IS IT -- I THOUGHT THAT THE CLAIM

TERM WASN'T REQUIRING THAT EXECUTION TO BE IN PARALLEL, BUT THE INITIATION OF THE TRANSMISSION TO BE IN PARALLEL. AND THE "EXECUTING THE FRAME TRANSMISSION TASK" NEEDED TO START BEFORE YOU INITIATED TRANSMISSION. BUT IT DIDN'T HAVE TO FINISH BEFORE YOU INITIATED TRANSMISSION.

MR. CORDELL: WELL, THAT'S PART OF THE DIFFICULTY HERE IS IT'S JUST NOT CLEAR. IT'S JUST NOT CLEAR. SO WE HAVE -- THE COURT'S ALREADY DECIDED, AND I THINK AGAIN CORRECTLY, THAT THE FRAME TRANSMISSION TASK INITIATES THE TRANSMISSION.

IT IS NOT THE TRANSMISSION ITSELF. WE KNOW THAT IT INITIATES IT. WE KNOW THAT IT HAS TO OVERLAP WITH THE FRAME TRANSFER TASK, WHATEVER THAT IS. AND UNLESS WE CAN FIX THOSE END POINTS, KNOWING THAT IT INCLUDES CARRIER SENSE MULTIPLE ACCESS, WELL, THAT HELPS. BUT IT DOESN'T TELL US WHAT THOSE END POINTS ARE.

THE COURT: BUT I WAS TRYING TO CLARIFY. SO I DID NOT READ THIS STEP AS REQUIRING THE EXECUTION OF THE FRAME TRANSMISSION TASK IN PARALLEL WITH THE FRAME TRANSFER TASK WITH THE TRANSMISSION BEING IN PARALLEL.

MR. CORDELL: THE CORRECT FORMULATION IS SET FORTH RIGHT IN THE CLAIM, YOUR HONOR. I MAY HAVE MISQUOTED IT.

"TO INITIATE TRANSMISSION OF THE FRAME FROM THE BUFFER MEMORY TO THE NETWORK IN PARALLEL WITH THE FRAME TRANSFER TASK."

THE COURT: SO THE EXECUTING OF THE FRAME

TRANSMISSION TASK IS PURELY TO INITIATE TRANSMISSION. AND ONCE YOU INITIATE TRANSMISSION, THAT IS DONE IN PARALLEL WITH SOMETHING ELSE IS HOW I WOULD READ THAT STATEMENT.

MR. CORDELL: I THINK THAT'S A FAIR READING. I THINK THAT'S A FAIR READING.

THE COURT: OKAY. GO ON.

MR. CORDELL: LOOKING AT THE INTRINSIC RECORD, A COUPLE OF POINTS I WOULD LIKE TO PUT OUT HERE. NUMBER ONE IS THAT THIS PHRASE WAS ADDED, YOU KNOW, OVER THREE YEARS AFTER THE ORIGINAL SPECIFICATION WAS FILED.

SO THIS CLEARLY WASN'T ANYTHING THAT WAS CONTEMPLATED AS PART OF THE ORIGINAL PROSECUTION. IT WAS ADDED AS PART OF THE CONTINUATION THAT LED TO THE '094 PATENT RATHER THAN THE '872. SO IT'S NOT SURPRISING THAT THAT INTRINSIC RECORD IS LACKING HERE. IT SIMPLY WASN'T SOMETHING THAT THEY HAD CONTEMPLATED.

AND WE'VE ALREADY COVERED THIS POINT, BUT THE COURT'S ALREADY DECIDED AGAIN CORRECTLY THAT IT MEANS SOMETHING OTHER THAN TRANSMITTING A FRAME. WE'VE GOT TO LOOK ELSEWHERE.

USEI ENGAGED IN THIS LINGUISTIC DECONSTRUCTION. WE SAW SOME OF THAT TODAY, WHERE EACH OF THE INDIVIDUAL TERMS WERE DEFINED. BUT IT IS SIMPLY NOT HELPFUL THAT FRAME HAS A DEFINITION AND TASK, BECAUSE THEY CLEARLY ARE USING THESE IN A UNIQUE WAY.

WE'VE GOT TO FIND A DISTINCTION, FOR EXAMPLE, BETWEEN "FRAME TRANSMISSION TASK" AND "FRAME TRANSFER TASK," BOTH OF

WHICH SHARE THE SAME WORDS. SO IT'S JUST NOT ENOUGH.

COUNSEL RELIED ON THE BANCORP CASE. THE REALITY IS THAT THE BANCORP CASE HAD A WEALTH OF INTERPRETATIVE CLUES IN THE INTRINSIC RECORD. THE TWO TERMS THAT WERE BEING COMPARED WERE "SURRENDER VALUE PROTECTED INVESTMENT" VERSUS "STABLE VALUE PROTECTED INVESTMENT."

AND THE COURT CORRECTLY CONCLUDED THAT THOSE TWO WERE SOMETIMES USED INTERCHANGEABLY. AND THOSE WERE THE KINDS OF CLUES THAT THE COURT COULD RELY ON TO GET MEANING FOR THE SURRENDER VALUE TERM.

THERE WAS AN ACRONYM "SVP" THAT WAS USED COMMONLY FOR BOTH OF THEM. WE DON'T HAVE THAT HERE. WE DON'T HAVE ANYTHING THAT TELLS US THAT FRAME TRANSMISSION TASK IS SIMILAR TO OR DIFFERENT FROM THE FRAME TRANSFER TASK OTHER THAN THE FACT THAT THEY ARE USED AS SEPARATE ELEMENTS IN THE CLAIM.

WE DON'T HAVE ANYTHING ELSE. WE DON'T HAVE AN "FTP" THAT IS RECITED IN THE SPECIFICATION THAT WOULD SOMEHOW GIVE US THAT.

THE COURT: WELL, WE HAVE -- WE DO -- ARE TOLD IN THE CLAIMS THAT THE TWO THINGS HAPPEN BETWEEN TWO DIFFERENT DEVICES.

MR. CORDELL: CORRECT.

THE COURT: OKAY.

MR. CORDELL: CORRECT. AND ONE OF THE POINTS THAT COUNSEL BROUGHT UP WAS THIS NOTION THAT PERHAPS THE ERROR CORRECTION CODES THAT THE COURT ASKED ABOUT COULD HAVE BEEN

CREATED YEARS BEFORE IN SOME OTHER DEVICE. BUT IN THIS SYSTEM THE ERROR CORRECTION CODES ARE ACTUALLY CREATED BY THE ADAPTER ITSELF. SO IT'S NOT CORRECT TO SAY THAT YOU COULD CREATE THEM IN THE HOST, FOR EXAMPLE, BEFORE THE FRAME IS EVER PUT OUT FOR TRANSMISSION, BEFORE IT'S EVER PUT INTO THE ADAPTER FOR ULTIMATE TRANSMISSION OUT TO THE NETWORK.

THAT'S JUST TECHNOLOGICALLY NOT A CORRECT STATEMENT.

WE'VE HAD OTHER COURTS THAT HAVE LOOKED AT THIS LINGUISTIC DECONSTRUCTION APPROACH AND HAVE REJECTED IT.

THE AGERE SYSTEM THAT THE DISTRICT COURT THERE RECOGNIZED THAT VIRTUALLY EVERY ENGLISH WORD HAS A DEFINITION. YOU CAN PUT THEM SIDE-BY-SIDE AND CLAIM THAT THAT'S MEANINGFUL. BUT THAT DOESN'T REALLY ADVANCE THE PROCESS HERE.

WE NEED TO KNOW WHETHER IN THIS CASE, IN THIS CLAIM WE CAN DISCERN THE BOUNDARIES OF THIS PARTICULAR TERM. AND, AGAIN, "FRAME TRANSMISSION TASK" AS DISTINCT FROM "FRAME TRANSFER TASK."

THE COURT ALREADY DECIDED THAT, IN FACT, THERE ARE CERTAIN THINGS ABOUT THE FRAME TRANSMISSION TASK THAT WE CAN CONCLUDE. BUT THAT THE INDIVIDUAL WORDS SIMPLY DON'T GET US THERE. AND THAT WAS IN THE CLAIM CONSTRUCTION ORDER AT 19 TO 20.

THE WORD "TASK" APPEARS TWICE IN THE SPECIFICATION, AND IT'S WITH RESPECT TO THE PRIOR ART IN BOTH CASES. AND IT DOESN'T TELL US THAT THE TASK IS USED IN ANY PARTICULAR WAY

HERE. IT'S USED IN A FAIRLY GENERIC SENSE. SO THE TWO CITATIONS WE HAVE ON SLIDE 29 OUT OF THE '094 PATENT AT COLUMN ONE, AGAIN, DON'T GIVE US THE KINDS OF INTERPRETATIVE CLUES WE NEED TO KNOW WHETHER A FRAME TRANSMISSION TASK IS A GIRAFFE OR A RHINOCEROS.

THE COURT: DON'T WE GET SOME HELP OUT OF THE WORD "EXECUTION"? IT'S GOT TO BE SOMETHING SUBJECT TO EXECUTION.

MR. CORDELL: THAT'S TRUE. THAT'S TRUE. IT MUST BE EXECUTABLE, I SUPPOSE, GIVEN THE CLAIM TERM.

THE COURT: AND SO IF I COMBINE THAT WITH MY OBLIGATION TO CONSTRUE IT SO IT IS VALID AT THIS POINT SUBJECT TO LATER PROCEEDINGS TO CHALLENGE IT, BUT I'M IN CLAIM CONSTRUCTION MODE. I HAVE TO KIND OF TRY TO GIVE IT A MEANING, IF I CAN. AND IF "EXECUTION" IS USED AS WELL AS THE PROTOCOLS THAT I SEE IN THE DEPENDENT CLAIMS, WHY SHOULDN'T I THEN USE THAT AS THE TWO SOURCES FOR GIVING IT A GENERAL DEFINITION THAT INCLUDES THAT SUBSET OF DEPENDENT CLAIMS, AND -- BECAUSE UNLESS YOU TELL ME THESE PROTOCOLS ARE NOT SOMETHING THAT YOU EXECUTE.

MR. CORDELL: AGAIN, I HAVE TROUBLE WITH SAYING THAT WE EXECUTE A PROTOCOL. THE PROTOCOL TELLS YOU WHAT YOU HAVE TO DO. IT TELLS YOU THE SET OF FUNCTIONALITY THAT MUST BE ACCOMPLISHED. AND I SUPPOSE YOU COULD SAY THAT YOU EXECUTE THAT IN THAT YOU ACCOMPLISH THOSE FUNCTIONS IN SOME FASHION.

BUT IT'S NOT A STANDARD SET OF CODE THAT YOU POINT TO AND SAY THAT IS -- THAT IS THE CARRIER SENSE EXECUTABLE, IF YOU WILL.

THE COURT: BUT HOW ABOUT THEN -- PERHAPS THIS IS NOT YOUR AREA -- BUT IF I GO TO FRAME TRANSFER TASK, AND I HAVE THE PROSECUTION HISTORY WHERE THE EXAMINER ASKS ABOUT THAT TERM AND WAS TOLD IN RESPONSE THAT THAT INCLUDES SUBSTEPS OF COMPOSING AN IDENTIFIER FOR THE FRAME, LOADING THE IDENTIFIER INTO THE NETWORK ADAPTER, AND IN RESPONSE TO THE IDENTIFIER USING RESOURCES ON THE ADAPTER CARD TO CONTROL MOVEMENT.

ARE THOSE SIMILAR IN KIND AND CHARACTER TO THE PROTOCOLS SO THAT THAT HELPS ME TO SAY THE PROTOCOLS ARE HELPING ME TO DEFINE "TASK" AS THIS INVENTOR OR THESE INVENTORS ARE USING?

MR. CORDELL: SO CURIOUSLY I WOULD RESPOND IN TWO WAYS, YOUR HONOR. FIRST OF ALL, USEI DOESN'T EMBRACE THOSE THREE STEPS, THE THREE STEPS THAT THE COURT JUST OUTLINED AND ARE LISTED IN THAT RESPONSE TO AN OFFICE ACTION.

THAT'S NOT THE CONSTRUCTION THAT THEY ARE ADVOCATING HERE. AND, IN PART, IT MAY BE BECAUSE THEY ARE FRANKLY -- I DON'T WANT TO SAY THEY ARE A LITTLE OFF, BUT THE CARRIER SENSE DOESN'T REALLY -- DOESN'T REALLY COME UP IN THE THREE STEPS.

THE THREE STEPS ARE COMPOSING THE IDENTIFIER FOR THE FRAME; LOADING THE IDENTIFIER IN THE NETWORK ADAPTER; AND THEN IN RESPONSE TO THE IDENTIFIER USING RESOURCES ON THE ADAPTER CARD TO CONTROL MOVEMENT OF THE DATA INTO THE BUFFER MEMORY.

THOSE DON'T REALLY INCLUDE CARRIER SENSE. THAT'S REALLY THE PART OF THE PROTOCOL THAT DEALS WITH THE INTERFACE

BETWEEN THE ADAPTER AND THE NETWORK. WHEREAS, IN THIS CASE WE'RE TALKING ABOUT THE TRANSFER BETWEEN THE HOST AND THE ADAPTER.

SO IT'S A LITTLE BIT DIFFERENT. BUT IMPORTANTLY, USEI DOESN'T EMBRACE THIS AS A DEFINITION FOR EVEN A FRAME TRANSFER TASK.

WE COME DOWN TO THIS, WHICH I DO BELIEVE IS WHERE WE ARE IN THIS CASE. IT IS THE SIMPLE FACT THAT THE FRAME TRANSMISSION TASK WAS A COINED TERM. IT'S SOMETHING THAT THE PATENT LAWYERS MADE UP THREE YEARS AFTER THE ORIGINAL SPECIFICATION WAS FILED. IT DIDN'T APPEAR IN THE ORIGINAL SPECIFICATION.

AND THEY HAD AN OBLIGATION. THEY HAD AN OBLIGATION TO PROVIDE US WITH A DEFINITION. AND HAVING FAILED TO DO THAT, WE AS PUTATIVE, ACCUSED INFRINGERS, YOU KNOW, ARE AT SEA.

WE'RE STRUGGLING WITH TRYING TO DEFINE THIS. AND AT SOME POINT THE PATENTEE HAS TO BEAR THAT RESPONSIBILITY. AND HERE WE BELIEVE THAT THE COURT'S RULING IN ACAICA WAS SPOT ON. AND IT'S BACKED UP BY LOTS OF FEDERAL CIRCUIT PRECEDENCE THAT IF THEY FAILED TO MAKE THAT DEFINITION, THEN IT'S INDEFINITE.

I WON'T SPEND TIME ON USEI'S EXPERT. WE HAVE SOME SLIDES ON THIS, YOUR HONOR. WE COMPARED THE DECLARATIONS BEFORE. THEY SAID THAT THESE TERMS ARE DEFINED IN THE CLAIMS. THEN, THEY SAID NOW THEY HAVE A PLAIN MEANING. WE THINK WE'RE PAST THAT. WE DON'T THINK THAT THIS IS PARTICULARLY INSTRUCTIVE IN

THIS CASE, AND WE FEEL THAT AT THE BOTTOM USEI EXPERT DOESN'T ADDRESS THE FUNDAMENTAL QUESTION, WHICH IS WHETHER THE BOUNDARIES OF THIS CLAIM WOULD BE UNDERSTOOD TO ONE OF ORDINARY SKILL. HE SIMPLY REPEATS THE PLAIN MEANING ARGUMENT.

WE PUT IN OUR OWN DECLARATION. AGAIN, I WON'T SPEND A LOT OF TIME ON THIS.

MR. HERMAN: YOUR HONOR, I HESITATE TO INTERRUPT, BUT WE DO HAVE AN OBJECTION TO THIS. IT WAS OUR UNDERSTANDING BASED ON THE DEFENDANTS' MOTION TO YOUR HONOR AND YOUR HONOR'S GRANTING OF THAT MOTION TO ALLOW THEIR EXPERT DECLARATION TO BE FILED THAT IT WOULD NOT BE RELIED ON AT THE MARKMAN HEARING. THEY MADE THAT EXPRESS REPRESENTATION TO YOUR HONOR, AND YOUR HONOR FOUND THAT TO BE --

THE COURT: LET'S DO IT THIS WAY. LET ME SEE IF I CAN DO THE JOB THAT YOU GIVE ME IN CLAIM CONSTRUCTION WITHOUT DECLARATIONS. AND OPINION TESTIMONY IS REALLY WHAT IT IS. AND THERE IS ROOM FOR ME TO DO THAT. IF I SAY:

"WELL, GEE, I CAN'T DO IT WITHOUT THAT. I NEED HELP. I NEED EVIDENCE. COME BACK TO THAT."

MR. HERMAN: OKAY.

MR. CORDELL: ALL RIGHT. THEN, I'LL MOVE ALONG, YOUR HONOR.

THE LAST POINT I WANT TO JUST DO IS TO EXAMINE THE USEI CONSTRUCTION ITSELF.

SO WHAT THEY HAVE DONE IS THEY HAVE SUGGESTED

"COMMANDS" EITHER SINGULAR OR PLURAL, "INSTRUCTIONS" SINGULAR OR PLURAL "TO INITIATE TRANSMISSION OF A FRAME."

THE PROBLEM IS THAT IT DOESN'T REALLY ADVANCE THE BALL. WE DON'T HAVE ANYTHING IN THE SPECIFICATION TO KNOW WHAT THESE THINGS ARE SUPPOSED TO BE AND WHERE THEY COME FROM.

THEY ARE ARBITRARY. THEY ARE MADE BOTH SINGULAR AND PLURAL. SO THE TASK THAT WAS RECITED AS THE SINGULAR IS NOW, I SUPPOSE, PLURAL IN SOME SENSE.

THE TERMS ARE JUST SUBSTITUTING NEW GENERIC TERMS FROM THE OLD ONES WE ALREADY HAD WHEN WE KNOW THAT THE GENERIC TERMS THEMSELVES ARE NOT DISTINCTIVE ENOUGH.

"FRAME TRANSMISSION TASK" HAS TO BE DIFFERENT FROM "FRAME TRANSFER TASK."

WE LOOK AT THINGS -- FOR EXAMPLE, THE TERM "COMMAND." IT'S USED ONCE IN THE SPECIFICATION. IT'S USED WITH RESPECT TO A DOABUFFER. IT'S A SIGNAL. WE CAN ARGUE ABOUT WHETHER OR NOT A SIGNAL IS A COMMAND OR NOT.

BUT, YOU KNOW, WE'VE JUST INTRODUCED A WHOLE NEW LEVEL OF DEBATE AND ARBITRARINESS INTO THE CONSTRUCTION WHEN YOU USE THE USEI APPROACH.

THERE IS A FUNDAMENTAL REDUNDANCY IN THE USEI CONSTRUCTION. IF WE PUT IT BACK INTO CONTEXT, THE CLAIM LANGUAGE SAYS:

"EXECUTING A FRAME TRANSMISSION TASK IN THE NETWORK INTERFACE DEVICE TO INITIATE TRANSMISSION OF

THE FRAME."

IF WE PUT USEI'S CONSTRUCTION INTO CONTEXT IT BECOMES:

"EXECUTING A COMMAND OR INSTRUCTION TO INITIATE TRANSMISSION OF A FRAME IN THE NETWORK INTERFACE DEVICE TO INITIATE TRANSMISSION OF A FRAME."

IT SIMPLY DOESN'T ADVANCE THE ANALYTICAL BALL TO REPEAT THOSE TERMS AND SUBSTITUTE IN NEW GENERIC TERMS THAT ARE SIMILARLY UNDEFINED.

SO WITH THAT, YOUR HONOR, WE BELIEVE THAT AT BOTTOM, THE FRAME TRANSMISSION TASK IS INDEFINITE. AGAIN, IT'S A COINED TERM. THEY HAD AN OBLIGATION TO DEFINE THAT, AND THEY DIDN'T.

COUNSEL DIDN'T SPEND A LOT OF TIME ON "MEDIUM ACCESS TASK," AND UNLESS THE COURT HAS QUESTIONS ON IT, SAME ARGUMENTS APPLY HERE.

WE HAVE THE SAME REDUNDANCY. WE HAVE THE SAME COINED TERM PROBLEM. IT'S NOT SUFFICIENT TO SIMPLY THROW UP OUR HANDS AND SAY THAT WE'VE SEEN TERMS LIKE "MEDIA" AND "ACCESS" IN THE LITERATURE. IT'S VERY, VERY DIFFICULT, BUT THE REALITY IS THE TERM THAT IS USED IN THE LITERATURE OR THE TERM THAT COUNSEL SHOWED US FROM THE ETHERNET SPECIFICATION WAS "MEDIA ACCESS CONTROLLER."

THOSE ARE DIFFERENT TERMS. AGAIN, THE PATENTEE DELIBERATELY CHOSE TO USE THESE TERMS IN THE CLAIMS, AND THEY NEED TO EXPLAIN WHY.

AND THEN, FINALLY, ON "FRAME TRANSFER TASK," WE HAVE ALREADY COVERED THE OFFICE ACTION RESPONSE, BUT JUST TO REITERATE, THE REALITY IS THAT IF THE THREE STEPS RECITED IN THE OFFICE ACTION RESPONSE WAS SUFFICIENT, THEN USEI PRESUMABLY WOULD HAVE EMBRACED THAT CONSTRUCTION, AND THEY DIDN'T. AND THEY DIDN'T FOR A REASON.

IT'S SIMPLY NOT DEFINITIONAL. AND THEN, FINALLY, YOUR HONOR, JUST LOOKING AT MY NOTES, COUNSEL SEVERAL TIMES SAID THAT WE DIDN'T MAINTAIN THAT THIS -- THAT "FRAME TRANSMISSION TASK" WAS INDEFINITE IN OUR EARLIER FILINGS IN THIS CASE.

THAT'S NOT QUITE TRUE. IN SEPTEMBER OF 2011, WE CLEARLY PUT IN THAT FRAME TRANSMISSION TASK WAS INDEFINITE IN OUR INVALIDITY CONTENTIONS. IT'S BEEN PART OF EVERY SINGLE ONE OF OUR BRIEFS IN THIS CASE. IT'S SIMPLY NOT --

THE COURT: IT WOULDN'T MATTER TO ME IF YOU DID IT OR NOT. I HAVE AN INDEPENDENT OBLIGATION TO CONSTRUE THE TERMS. IT'S MY JOB. AND IF YOU SAY IT'S A TERM THAT I NEED TO PAY ATTENTION TO, AND I LOOK AT IT AND I FIND QUESTIONS ABOUT IT, IT WOULDN'T MATTER TO ME WHETHER YOU HAD THE SAME QUESTIONS.

ALL RIGHT. SO LET'S GO BACK TO YOUR OPPONENT, THEN.

MR. HERMAN: THANK YOU.

MR. CORDELL: THANK YOU.

THE COURT: YOU WERE GOING TO CLOSE THE ARGUMENT WITH RESPECT TO THIS TERM.

MR. HERMAN: VERY BRIEFLY, YOUR HONOR. THANK YOU.

COULD YOU RETURN TO SLIDE 18, PLEASE?

THE QUESTION YOUR HONOR RAISED IN YOUR FIRST MARKMAN ORDER WAS:

"WOULD ONE OF ORDINARY SKILL IN THE ART UNDERSTAND THESE TERMS?"

AND THE TERM "FRAME TRANSMISSION TASK," I THINK IT'S IMPORTANT TO NOTE IN YOUR HONOR'S ORIGINAL ORDER, IT WASN'T THAT TERM THAT YOU SAID WAS ARGUABLY AMBIGUOUS. AND, OBVIOUSLY, YOU KNOW YOUR ORDER AS WELL AS ANY OF US.

BUT YOUR HONOR SAID IT WAS THE WHOLE EXECUTING LARGER TERM THAT YOU FOUND TO BE ARGUABLY AMBIGUOUS IN THE CONTEXT, NOT THE INDIVIDUAL FRAME TRANSMISSION TASK.

SO WE GO BACK TO: WHAT WOULD A PERSON OF ORDINARY SKILL IN THE ART UNDERSTAND? WE THINK THE PROSECUTION HISTORY WITH THE EXAMINER IS DIRECTLY ON POINT SHOWING --

THE COURT: SO HERE'S YOUR CHARGE. YOUR CHARGE IS TO TELL ME WHAT INSTRUCTIONS OR COMMANDS WOULD BE UNDERSTOOD, UNLESS YOU SAY "THAT'S ENOUGH."

IN OTHER WORDS, IS IT SUFFICIENT IN YOUR VIEW FOR ME TO SAY:

"EXECUTING INSTRUCTIONS TO INITIATE TRANSMISSION," WHICH WOULD BE THE EQUIVALENT OF WHAT I'M BEING ASKED TO SAY ARE: IS THE MEANING OF "FRAME TRANSMISSION TASK," OR IS THIS A TERM, AS YOUR OPPONENT ARGUES, COINED BY THE INVENTOR TO MEAN SOMETHING IN PARTICULAR THAT'S

DONE?

BECAUSE IT WOULD CERTAINLY BE DIFFERENT TO SAY "INITIATING TRANSMISSION" WITHOUT THE PREFACE OF EXECUTING A FRAME TRANSMISSION TASK TO INITIATE IT, BECAUSE THAT MEANS SOMETHING DEFINITE HAS TO BE DONE BEFORE THAT. AND IF IT'S MERELY INITIATING TRANSMISSION, WHICH IS, I PRESUME, AN INSTRUCTION, THESE ARE DIFFERENT COMMANDS OR INSTRUCTIONS.

SO WHAT IS IT THAT WOULD BE THE CHARACTER FOR THOSE COMMANDS OR INSTRUCTIONS THAT IS DIFFERENT FROM A COMMAND OR INSTRUCTION THAT SIMPLY SAYS "TRANSMIT"?

MR. HERMAN: CAN YOU TURN TO THE -- I THINK IT MAY BE SLIDE 31.

NO. I'M SORRY. SLIDE 14. 14, YES.

THIS IS WHAT ONE OF ORDINARY SKILL IN THE ART WOULD UNDERSTAND "FRAME TRANSMISSION OPERATION" TO BE AT THE TIME.

THE COURT: WHAT?

MR. HERMAN: THE ETHERNET SPECIFICATION HAS VERY DETAILED STEPS THAT ARE SET FORTH THAT THEY WOULD UNDERSTAND TO BE CARRIED OUT TO TRANSMIT A FRAME, FOR A FRAME TRANSMISSION OPERATION.

THE COURT: NOW, HERE'S WHAT I'M CONFUSED ABOUT. SO THOSE PROTOCOLS I DON'T UNDERSTAND FULLY, BUT MY RUDIMENTARY UNDERSTANDING IS THEY ARE WAYS OF FRAMING THE DATA. I SHOULDN'T USE "FRAME." THEY ARE WAYS OF PACKAGING THE DATA SO THAT IT FLOWS IN A PARTICULAR WAY IN A PARTICULAR CHANNEL TO A

PARTICULAR PLACE, OR SOMETHING LIKE THAT.

SO BUT WHAT ABOUT THOSE THAT INITIATE TRANSMISSION? IT SEEMS TO ME THAT IF I WERE TO CHARACTERIZE THOSE PROTOCOLS IT WOULD BE PUTTING THE FRAME IN SOME PACKAGE SO THAT WHEN TRANSMISSION IS INITIATED IT'S RECEIVED.

THEY DON'T INITIATE TRANSMISSION, SO IT SEEMS TO ME THAT IF YOU SAY "EXECUTE A COMMAND TO INITIATE TRANSMISSION," THE FOCUS OF THAT COMMAND OUGHT TO BE THE SAME AS "NOW TRANSMIT." IT HASN'T ANYTHING TO DO WITH HOW IT'S PACKAGED OR CHARACTERIZED. TO INITIATE THIS TASK IT IS: I NEED THIS TO TRANSMIT. I DON'T NEED IT I FOR ANY OTHER PURPOSE, JUST TO TRANSMIT.

IS THAT TOO NARROW?

MR. HERMAN: I BELIEVE IT MAY BE. I THINK THE DIFFICULTY AS A PATENTEE TRYING TO DESCRIBE THIS IS YOU DON'T WANT TO GET LOCKED DOWN TO AT SINGLE PROTOCOL NECESSARILY. SO YOU WOULD LEAVE IT FOR ONE OF ORDINARY SKILL IN THE ART. FOR THE ETHERNET SPECIFICATION THEY WOULD HAVE TO FOLLOW THESE PARTICULAR INSTRUCTIONS TO PACKAGE THE DATA PROPERLY.

THE COURT: BUT NOT TO INITIATE IT. THOSE WOULD BE DONE TO -- TO AFFECT THE RECEIPT OR TO PUT IN IT A PLACE WHERE IT WOULD BE AN EFFECTIVE TRANSMISSION, BUT IT WOULDN'T BE NECESSARY TO TRANSMIT, CORRECT?

MR. HERMAN: I BELIEVE THAT'S RIGHT, TO PREPARE IT FOR TRANSMISSION, WHAT THE PATENT TALKS ABOUT.

THE COURT: TO PREPARE IT FOR TRANSMISSION, BUT IT WOULDN'T BE TO INITIATE THE TRANSMISSION, UNLESS YOU SAY:

"OKAY. PRIOR TO TRANSMITTING" -- AND ONE OF THE THINGS I NOTICED ABOUT THIS ONE, THIS, THE TITLE OF THIS PATENT HAD TO DO WITH AUTOMATIC TRANSMISSION, RIGHT?

I SHOULD GO AND LOOK AT IT BECAUSE SOME OF THEM, THE TITLE CHANGED. SO THIS IS '094. IT SAYS:

"METHOD OF AN INITIATION OF DATA TRANSMISSION."

SO WHAT I'M LOOKING AT IS AN INVENTION WHICH THE INITIATION OF THE TRANSMISSION IS TAKING PLACE AUTOMATICALLY. I DON'T KNOW WHAT THAT WORD MEANS, BUT IT MEANS AFTER I DO ALL THOSE STEPS IT STARTS.

AND SO THIS INITIATION PROCESS THAT I'M -- THIS EXECUTION THAT I'M GOING THROUGH OF FRAME TRANSMISSION, THAT TASK IS WHAT INITIATES TRANSMISSION.

SO IT'S VERY IMPORTANT THAT I KNOW WHAT THAT IS, BECAUSE THIS IS AN INVENTOR WHO SAYS:

"I'VE COME UP WITH A WAY THAT TRANSMISSION IS INITIATED BY THESE THINGS."

SO WHAT ARE THEY? THAT'S THE QUESTION THAT IS BEING -- HOW DOES ONE KNOW THAT YOU HAVEN'T RUN AFOUL OF THIS WAY OF AUTOMATICALLY INITIATING TRANSMISSION WHEN YOU PERFORM ANY COMMANDS OR INSTRUCTIONS OTHER THAN -- OR DOES THIS CLAIM ALL -- ANY COMMAND OR INSTRUCTION THAT YOU DO TO INITIATE TRANSMISSION YOU'VE PRACTICED THIS STEP?

MR. HERMAN: I BELIEVE THE CLAIM, IF YOU LOOK AT COLUMN FOUR, LINE 52, IT TALKS ABOUT HOW THE HOST COMPUTER COMPOSES A FRAME OF DATA TO BE TRANSMITTED ON THE NETWORK MEDIUM.

THE COURT: THAT DOESN'T INITIATE IT. THAT'S TO BE TRANSMITTED. IN OTHER WORDS, YOU ARE COMPOSING SOMETHING.

MR. HERMAN: CORRECT.

THE COURT: BEFORE YOU TRANSMIT IT, YOU HAVE GOT TO COMPOSE IT. IS THIS A SUBSTITUTE FOR COMPOSING?

MR. HERMAN: THIS WOULD BE HOW YOU'RE IDENTIFYING THE DATA TO BE TRANSMITTED. AND DEPENDING ON WHICH PROTOCOL YOU ARE FOLLOWING, THERE ARE A SERIES OF STEPS THAT ARE PART OF THIS TRANSMISSION PROCESS.

THE COURT: OKAY.

MR. HERMAN: SO I THINK TO ONE OF ORDINARY SKILL IN THE ART THE FRAME TRANSMISSION OPERATION OR TASK WOULD BE UNDERSTOOD IN THE CONTEXT OF THE PARTICULAR PROTOCOL THAT DEFINES COMMANDS OR INSTRUCTIONS.

THE COURT: ALL RIGHT. LET ME STRUGGLE WITH THIS MORE. I DON'T WANT TO SPEND MORE TIME ON IT. I'M SURE YOU ALL HAVE OTHER MATTERS TO ADDRESS.

MR. HERMAN: JUST TWO VERY BRIEF POINTS, YOUR HONOR, AND THEN I'LL SIT DOWN.

THE DEFENDANTS KEEP REFERRING TO THIS AS A COINED TERM, THE TASK TERMS AS COINED TERMS. I DON'T THINK THAT'S

FAIR. FRAME TRANSMISSION IS WELL KNOWN IN THE ART.

FRAME TRANSFER, AS YOUR HONOR POINTED OUT IN THE FIRST HEARING, AFTER READING THESE PATENTS, TALKS -- FRAME TRANSFER TALKS ABOUT HOST COMPUTER TO BUFFER MEMORY CONSISTENTLY IN THE PATENTS. TRANSMISSION PART IS BUFFER MEMORY OUTSIDE THE NETWORK.

THAT'S CONSISTENTLY DISCUSSED IN THE PATENT. SO THOSE CONCEPTS, THOSE ARE NOT COINED CONCEPTS. MEDIUM ACCESS TASK, THERE'S A MEDIUM ACCESS CONTROLLER DISCLOSED IN THE PATENTS AND CERTAINLY IN PRACTICALLY EVERY COMPUTER TODAY.

THOSE ARE NOT COINED TERMS. PEOPLE IN ART UNDERSTAND EXACTLY WHAT THEY MEAN. ADDING THE WORD "TASK" DOESN'T MAKE IT INDEFINITE.

THE COURT: COULD I DRAW ANY MEANING FROM THE USE OF THE ARTICLE "A" RATHER THAN "THE" TO FRAME TRANSMISSION TASK OR TASKS?

MR. HERMAN: I BELIEVE THAT'S SIMPLY IN THE FIRST INDEPENDENT CLAIM CALLING IT "A FRAME TRANSMISSION TASK" AVOIDS AN ANTECEDENT BASIS PROBLEM.

AND THE DEPENDENT CLAIMS MAY REFER TO "THE FRAME TRANSMISSION TASK," WHICH SIGNALS IT'S REFERRING TO THE ONE DISCUSSED IN THE INDEPENDENT CLAIM.

THE COURT: RIGHT. I GOT IT.

MR. HERMAN: FINALLY, SLIDE 24, "FRAME TRANSMISSION TASK" IS USED IN PATENTS, OR AT LEAST A PATENT OWNED BY INTEL.

THIS IS A PATENT THAT 7,676,604 THEY TALK DIRECTLY ABOUT A FRAME TRANSMISSION TASK, NOT ONLY IN THE SPECIFICATION, BUT THROUGHOUT THE INDEPENDENT CLAIMS, AS WELL.

SO IT'S A TERM THAT THEY CERTAINLY HAVE AN UNDERSTANDING OF WHAT IT MEANS.

AT WITH THAT, YOUR HONOR, I'LL CLOSE OUT ON THE TASK TERMS. THANK YOU.

THE COURT: THANK YOU.

MR. CORDELL: MAY I, YOUR HONOR?

THE COURT: CERTAINLY.

MR. CORDELL: SOMETHING NEW.

THE COURT: I KNEW THIS WAS COMING.

MR. CORDELL: THE '604 PATENT, YOUR HONOR, IS ON A STORAGE AREA NETWORK. IT'S A COMPLETELY DIFFERENT SYSTEM. AND IT REALLY UNDERSCORES THE DANGER IN RELYING ON EXTRINSIC IN THE CLAIM CONSTRUCTION FOR THIS PATENT.

WE'D BE HAPPY TO TAKE THE DEFINITIONS OUT OF THE '604 PATENT, BUT THEY WOULD MAKE NO SENSE. WE WOULD BE TALKING ABOUT MOVING DATA INTO AND OUT OF MEMORIES, AS OPPOSED TO MOVING THEM CROSS A NETWORK. AND IT WOULD BE COMPLETELY --

THE COURT: THANK YOU. ALL RIGHT. SO NOW WE'RE MOVING ON TO THE --

MR. STEPHENS: TO MEANS TERMS, YOUR HONOR.

THE COURT: OKAY. MY CLERK IS ALWAYS PAYING ATTENTION TO MY COURT REPORTER TO MAKE SURE SHE DOESN'T NEED A

BREAK.

PLEASE YELL AND SCREAM IF I KEEP GOING WHEN YOU NEED A BREAK, ALL RIGHT?

MR. STEPHENS: OKAY. WE'LL START WITH "HOST INTERFACE MEANS" IN THE CLAIM ONE OF THE '313 PATENT.

WE'VE PROVIDED IN OUR PRESENTATION THESE THREE COLUMN CHARTS THAT JUST SHOW THE VARIOUS POSITIONS OF THE PARTIES. I WON'T BELABOR THIS ONE.

WE'VE ALSO PROVIDED SUMMARIES OF EACH DISPUTE BEFORE EACH CLAIM TERM. SO HERE THE COURT'S PREVIOUSLY RESOLVED THAT THIS IS A MEANS-PLUS-FUNCTION TERM TO BE INTERPRETED UNDER 112-6.

THE DEFENDANTS CONTEND THAT THE DESCRIPTION IN THE SPECIFICATION'S PURELY FUNCTIONAL AND NOT SUFFICIENT TO SUPPORT 112-6. AND, THEREFORE, THAT THE CLAIM IS INVALID AS INDEFINITE.

IF YOUR HONOR FEELS OTHERWISE THERE REMAINS A DISPUTE ABOUT WHAT DESCRIPTION IN THE SPECIFICATION ACTUALLY IS THE APPROPRIATE DESCRIPTION TO PERFORM THE RECITED FUNCTIONS.

NOW, U.S. ETHERNET PROPOSES A VERY SLIM STRUCTURE. THEY CALL THIS "A STRUCTURE." IT'S GOT FIVE ELEMENTS IN IT: UPLOAD DMA LOGIC; DOWNLOAD DMA LOGIC; BUFFER MEMORY; HOST SYSTEM; AND INTERCONNECTING CIRCUITRY.

THE PROBLEM WITH IS THAT -- AND WE'VE SEEN THIS ALREADY, OF COURSE. IT'S BEEN A LITTLE BIT OF AN M.O. OF U.S. ETHERNET, THE PLAINTIFFS IN THIS CASE, TO PROPOSE CONSTRUCTIONS

THAT ACTUALLY TAKE WORDS THAT ARE ALREADY IN THE CLAIM. AND THIS IS NO DIFFERENT.

SO THEY ARE PROPOSING A STRUCTURE FOR:

"HOST INTERFACE MEANS" THAT INCLUDES A BUFFER MEMORY. BUT THE CLAIM ALREADY RECITES A BUFFER MEMORY. AND THE HOST INTERFACE MEANS IS FOR MANAGING DATA TRANSFERS BETWEEN THE HOST ADDRESS SPACE AND THE BUFFER MEMORY.

DOESN'T MEAN THAT THE HOST INTERFACE HAS THE BUFFER MEMORY AS A PART OF IT. IT SITS BETWEEN THE BUFFER MEMORY AND THE HOST ADDRESS SPACE AND MOVES THINGS BETWEEN THEM.

SO THE NOTION OF INCLUDING THE BUFFER MEMORY IN THE CORRESPONDING STRUCTURE DOESN'T MAKE ANY SENSE. IT'S ALREADY THERE SEPARATELY RECITED BY THE CLAIM. AND AS WE'LL SEE LATER THEY HAVE ALSO PROPOSED "BUFFER MEMORY" AS A PART OF THE CORRESPONDING STRUCTURE FOR THE NETWORK INTERFACE MEANS.

SO IN THEIR VIEW, THEN, THE BUFFER MEMORY APPEARS THREE TIMES IN THE CLAIM. JUST DOESN'T MAKE A LOT OF SENSE.

THEY ALSO PROPOSE THAT THE HOST BE A PART OF THE CLAIM. AGAIN, SAME KIND OF PROBLEM. A LITTLE BIT DIFFERENT, MAYBE. THE CLAIM SAYS THAT THE APPARATUS IS FOR CONTROLLING COMMUNICATION BETWEEN A HOST SYSTEM AND A NETWORK TRANSCEIVER.

IN ORDER TO CONTROL COMMUNICATIONS BETWEEN TWO THINGS YOU DON'T HAVE TO ACTUALLY IN THAT APPARATUS THAT CONTROLS COMMUNICATION HAVE BOTH OF THOSE THINGS THAT YOU CONTROL COMMUNICATION BETWEEN.

AND THE CLAIM WOULDN'T MAKE SENSE IF THE HOST INTERFACE MEANS INCLUDED THE HOST, BECAUSE THE HOST INTERFACE MEANS SAYS THAT IT SHARES THE HOST ADDRESS SPACE WITH THE HOST. AND UNDER THEIR CONSTRUCTION OF "HOST INTERFACE MEANS," THEN, YOU WOULD HAVE THE HOST SHARING ADDRESS SPACE WITH ITSELF, WHICH DOESN'T MAKE ANY SENSE.

SO THE BUFFER MEMORY AND THE HOST SYSTEM DON'T REALLY BELONG AS PARTS OF THE HOST INTERFACE MEANS. THEY ARE JUST PRETTY CLEARLY INCONSISTENT WITH THE STRUCTURE OF THE CLAIM AND WHAT'S DISCLOSED.

THEY ALSO PROPOSE AN INTERCONNECTING CIRCUITRY SUFFICIENT TO LINK THE REQUIRED STRUCTURES. AND PROBLEM HERE IS IT'S JUST NOT DISCLOSED ANYWHERE. YOU CAN READ THIS PATENT FROM ONE END TO THE OTHER AND NOT FIND ANY CIRCUITRY DISCLOSED OR DISCUSSED AT ALL IN CONNECTION WITH THE HOST INTERFACE MEANS OR THE DOWNLOAD OR UPLOAD LOGIC.

AND IF YOU LOOK AT FIGURE THREE AND THE OTHER DESCRIPTION OF THE DOWNLOAD AND UPLOAD LOGIC, THEY ARE NOT EVEN SHOW AS INTERCONNECTING, AT LEAST NOT IN ANY REASONABLY DIRECT WAY.

SO THIS NOTION THAT YOUR HONOR IS SUPPOSED TO JUST MAKE UP SOME STRUCTURE THAT'S NOT DISCLOSED IN THE PATENT TO CORRESPOND TO THE HOST INTERFACE MEANS IS INCONSISTENT WITH THE GOVERNING LAW AND SHOULDN'T DO IT.

SO THAT LEAVES THE DOWNLOAD AND UPLOAD DMA LOGIC. AND

WHAT YOU'LL FIND -- AND NOT JUST WITH THESE PIECES OF IT, BUT CERTAINLY WITH THOSE PIECES -- IS THERE'S NO CIRCUITRY ALGORITHMS OR ANY OTHER STRUCTURE DISCLOSED IN THE PATENT FOR THOSE.

THEY ARE JUST DESCRIBED AS BOXES OF LOGIC.

NOW, LET'S TALK ABOUT WHAT THE SPECIFICATION DOES EXPLICITLY TIE TO THE RECITED FUNCTION. SO IN THIS SLIDE, YOUR HONOR, I HAVE PUT THE RECITED FUNCTION THERE IN THE BOX ON THE LOWER LEFT SIDE. AND THE RECITED FUNCTION OF THIS PATENT IS FOR MANAGING DATA TRANSFERS BETWEEN THE HOST ADDRESS SPACE AND THE BUFFER MEMORY IN OPERATIONS TRANSPARENT TO THE HOST SYSTEM.

NOW, YOUR HONOR HAS CONSTRUED THAT PHRASE. I'M FOCUSING ON THE ACTUAL CLAIM LANGUAGE HERE JUST BECAUSE IT'S A LITTLE EASIER TO MAP ONTO SOME OF THE PORTIONS OF THE ACTUAL SPECIFICATION.

BUT IF YOU LOOK FOR THE LANGUAGE IN THE SPECIFICATION WHERE IT TALKS ABOUT MANAGING DATA TRANSFERS BETWEEN THE HOST ADDRESS SPACE AND BUFFER MEMORY IT'S IN THERE.

AND OF COURSE THE PLACE YOU WOULD EXPECT TO FIND IT IN A CLAIM THAT -- OR A LIMITATION THAT STARTS WITH HOST INTERFACE MEANS IS IN A DISCUSSION OF THE HOST INTERFACE LOGIC. AND THAT'S EXACTLY WHERE IT IS.

SO IT SAYS THAT THE HOST INTERFACE LOGIC MANAGES ACCESSES TO THE BUFFER MEMORY, AND IT DOES IT IN OPERATIONS THAT ARE TRANSPARENT TO THE HOST.

SO IT'S TIED VERY DIRECTLY TO THE RECITED FUNCTION IN CLAIM ONE.

SO WE SEE THAT THE HOST INTERFACE LOGIC, WHICH IS SHOWN AS "102" HERE AND INCLUDES A FEW OTHER BOXES INSIDE IT, THAT'S WHAT MANAGES DATA TRANSFERS BETWEEN THE HOST ADDRESS SPACE AND THE BUFFER MEMORY IN OPERATIONS TRANSPARENT TO THE HOST SYSTEM, THE WHOLE THING.

AND, OF COURSE, THERE'S A NUMBER OF PIECES INSIDE IT. THOSE PIECES ARE ALSO EXPLICITLY TIED TO THE RECITED FUNCTION.

SO THE SPECIFICATION TELLS YOU THAT THE HOST INTERFACE LOGIC INCLUDES TRANSMIT DESCRIPTOR LOGIC AND DOWNLOAD DMA LOGIC, AND THAT THOSE ARE USED IN THE TRANSMIT PROCESS.

AND WHAT YOU'LL FIND, YOUR HONOR, IF YOU LOOK AT THIS FIGURE, FIGURE THREE, THAT THE UPPER PART OF IT HAS ARROWS POINTING TO THE RIGHT INTO AND OUT OF THE BUFFER MEMORY. AND THE LOWER PART OF IT HAS ARROWS POINTING TO THE LEFT, INTO AND OUT OF THE BUFFER MEMORY.

SO THAT HELPS YOU REALIZE WHEN YOU'RE LOOKING AT IT THAT THE TRANSMIT RELATED STRUCTURES OR TRANSMIT RELATED LOGIC BOXES ARE SHOWN ON THE UPPER HALF, AND THE RECEIVER IS SHOWN ON THE LOWER HALF.

THE COURT: WELL, MAYBE THIS WOULD BE A CONVENIENT TIME TO TAKE A BREAK. LET ME LEAVE YOU WITH THIS. IT DOES SEEM TO ME THAT IN LOOKING AT THIS PARTICULAR PROBLEM, THESE CORRESPONDING STRUCTURES, I CAN DRAW SOME MEANING OF WHAT ARE

THE NECESSARY COMPONENTS TO, FOR EXAMPLE, CLAIM 13, HOST INTERFACE MEANS, BY LOOKING TO SEE WHETHER OR NOT IN DEPENDENT CLAIMS FROM CLAIM 13 NEW ELEMENTS ARE ADDED.

AND SO IF THOSE NEW ELEMENTS ARE ADDED AS PART OF THE LIMITATION ON CLAIM 13, THOSE NEW ELEMENTS, PERHAPS, SHOULD NOT BE REGARDED BY THE COURT AS NECESSARY TO CLAIM 13, BECAUSE THEY ARE ADDING FURTHER LIMITATIONS.

AND THIS DESCRIPTION COULD WELL BE A DESCRIPTION IN THE WRITTEN DESCRIPTION THAT INCLUDES MORE THAN SIMPLY THE BASE INVENTION. IT COULD INCLUDE ALL OF THE COMPONENTS THAT COULD BE DESCRIBED IN BOTH INDEPENDENT CLAIMS AND DEPENDENT CLAIMS.

SO I WORRY ABOUT USING THAT AS THE WAY OF DEFINING WHAT ARE THE CORE, NECESSARY ELEMENTS FOR STRUCTURE THAT CORRESPONDS TO HOST INTERFACE MEANS. AND MAYBE THAT'S WHAT THE PARTIES CAN ADDRESS.

AS A MATTER OF PROTOCOL, CAN I ADOPT THE NOTION THAT IF A PARTICULAR DEVICE, STRUCTURE, IS CALLED OUT BY THE DEPENDENT CLAIMS, CAN I JUST AS A MATTER OF COURSE IGNORE THOSE FOR PURPOSES OF CONSTRUING THE NECESSARY COMPONENTS FOR THE INDEPENDENT CLAIM?

DO YOU UNDERSTAND MY QUESTION?

MR. STEPHENS: I DO, YOUR HONOR.

THE COURT: AND SO IF BOTH SIDES COULD ADDRESS THAT THAT WOULD HELP ME WITH RESPECT TO ALL THESE.

NOT THAT'S NOT TO SAY YOU MIGHT NOT HAVE SOMETHING TO

SAY ABOUT WHETHER THERE'S SOME OTHER PROBLEM WITH THESE VARIOUS MEANS CLAIMS. BUT WHEN I ASKED FOR CORRESPONDING STRUCTURE, THE REASON I DID SO WAS BECAUSE IN THE FIRST ROUND OF THIS I WAS GETTING A LOT OF DISAGREEMENT ABOUT HOW BIG THAT SHOULD BE, HOW DETAILED IT SHOULD BE.

AND I WAS HOPING TO GET: WHAT IS THE CORE GROUP OF -- AND IT LOOKS LIKE YOU BOTH AGREE TO SOME THINGS AS BEING IN COMMON, AND PART OF WHAT SHOULD BE THE NECESSARY ELEMENTS. BUT THEN, I LOOK AT YOUR LISTS, AND YOURS GETS BIGGER. THEIRS GET TO -- DIFFERENT. THEY ARE DIFFERENT.

AND SO THAT IS HOW I WANT TO HAVE YOUR GUIDANCE IS WHAT SHOULD I DO WITH RESPECT TO HOW TO HANDLE ANYTHING THAT IS, OF NECESSITY, TIED TO A DEPENDENT CLAIM?

MR. STEPHENS: OKAY.

THE COURT: SO WE'LL COME BACK IN ABOUT TEN MINUTES.

MR. STEPHENS: THANK YOU, YOUR HONOR.

THE CLERK: ALL RISE.

(THEREUPON, A RECESS WAS TAKEN.)

THE CLERK: REMAIN SEATED AND COME TO ORDER.

THE COURT: YOU MAY CONTINUE.

MR. STEPHENS: THANK YOU, YOUR HONOR.

I'VE BEEN THINKING ABOUT YOUR QUESTION, AND I THINK THE FIRST ANSWER IS THAT CLAIM DIFFERENTIATION IS A JUDICIALLY CREATED DOCTRINE. IT'S COMMON LAW, AND IT CANNOT OVERRIDE THE STATUTE.

112-6 TELLS THE COURT WHAT IT MUST DO IN ORDER TO CONSTRUE A MEANS-PLUS-FUNCTION CLAIM. AND WE'VE CITED A NUMBER OF CASES. THERE'S SEVERAL LAY TERM CASES, I THINK, THAT ARE GOOD ON THIS POINT THAT SAY EXPLICITLY THAT YOU CAN'T RELY ON CLAIM DIFFERENTIATION TO OVERRIDE THE STATUTE.

BUT I THINK YOU CAN ALSO LOOK AT THE CLAIMS THEMSELVES AND SEE THAT IF YOU DO THAT WHAT YOU ARE LEFT WITH IS NOTHING BUT AN EMPTY BOX.

SO, FOR EXAMPLE, I THINK YOU CAN SEE FROM THIS FIGURE 1O2 IS A BOX THAT CORRESPONDS TO THE HOST INTERFACE LOGIC. INSIDE WE HAVE THIS BOX 107 THAT TRANSMITS STUFF. THAT INCLUDES TRANSMIT DESCRIPTOR AND DOWNLOAD DMA LOGIC.

WELL, THAT IS ALSO CLAIMED AS A DEPENDENT CLAIM. SO IF CLAIM DIFFERENTIATION WERE APPLIED IN CLAIM THREE, WHICH DEPENDS FROM CLAIM ONE AND SAYS:

"WHEREIN HOST INTERFACE MEANS INCLUDES TRANSMIT DESCRIPTOR LOGIC AND DOWNLOAD LOGIC," ALL YOU ARE LEFT WITH IN CLAIM ONE IS AN EMPTY BOX, 107, FOR TRANSMISSION.

AND THE THINGS THAT ARE SHOWN IN 108, THE TRANSFER AND UPLOAD LOGIC AND VIEW LOGIC, THOSE ARE ALSO ALL CLAIMED SEPARATELY AS DEPENDENT CLAIMS.

THE TRANSFER AND UPLOAD LOGIC IS IN CLAIM NINE, THE VIEW LOGIC IN CLAIM TEN. ALL THESE CLAIMS DEPEND FROM IN CLAIM ONE.

SO IF YOUR HONOR WERE TO SAY THAT CLAIM

DIFFERENTIATION MEANS THAT CLAIM ONE DOESN'T CORRESPOND TO THOSE STRUCTURES, THERE'S NOTHING LEFT. ALL YOU HAVE IS AN EMPTY BOX.

AND THE SPECIFICATION TELLS YOU THAT IT ISN'T JUST THAT EMPTY BOX 102 THAT IS TIED TO THE RECITED FUNCTION.

THE COURT: LET ME SEE IF I UNDERSTAND YOUR POSITION. I HAVE THE FUNCTION, AND SO THE CORRESPONDING STRUCTURE AT, I THOUGHT BOTH SIDES AGREED, WAS THE DOWNLOAD AND UPLOAD DMA LOGIC.

MR. STEPHENS: NOT AT ALL, YOUR HONOR. SO THAT IS A STRUCTURE THAT OVERLAPS BETWEEN THE TWO SIDES, SUPPOSEDLY. BUT OUR VIEW IS THAT'S NOT NEARLY ENOUGH TO ACCOMPLISH THE RECITED FUNCTION.

THE COURT: WELL, MAYBE NOT SUFFICIENT, BUT IT IS A CORRESPONDING STRUCTURE.

MR. STEPHENS: OKAY.

THE COURT: IN OTHER WORDS, THE CORRESPONDING STRUCTURE HAS TO BE THE STRUCTURE THAT PERFORMS THE FUNCTION. BUT YOUR ARGUMENT IS THAT IT NEEDS MORE.

MR. STEPHENS: THAT'S RIGHT.

THE COURT: ALL RIGHT. AND SO I SHOULD DRAW FROM YOUR POSITION WHAT MORE IS NEEDED OTHER THAN THOSE TWO?

MR. STEPHENS: YES.

THE COURT: WHAT MORE IS?

MR. STEPHENS: OKAY. IF I MAY, THOUGH, YOUR HONOR, LET ME POINT OUT THAT UNDER THIS CLAIM DIFFERENTIATION VIEW THAT

THE PLAINTIFFS HAVE ARGUED, THOSE TWO PIECES OF STRUCTURE WHICH ARE THE ONLY ONES THAT OVERLAP AND THE ONLY ONES EVEN RELATED TO THIS FUNCTION IN THEIR PROPOSED STRUCTURE WOULD ALSO NOT BE APPROPRIATELY INCLUDED IN THE HOST INTERFACE LOGIC IN CLAIM ONE, BECAUSE THEY ARE SEPARATELY RECITED INDEPENDENT CLAIMS.

THE COURT: ALL RIGHT. WELL, SO THAT WOULD ARGUE AGAINST MY PROPOSITION THAT I CAN USE THAT. I UNDERSTAND THAT. BUT THAT DOESN'T NECESSARILY MEAN THAT THEY ARE NOT CORRESPONDING STRUCTURE.

MR. STEPHENS: OH, NO. WELL, AND WE AGREE THAT THEY ARE CORRESPONDING DESCRIPTION. I MEAN, THE PROBLEM, OF COURSE, IS ALL YOU HAVE IS THE BOX LABELED "DOWNLOAD DMA LOGIC." THERE'S NO INDICATION HOW IT WORKS IN THE SPECIFICATION.

PUTTING THAT TO ONE SIDE, WE AGREE THAT THAT DESCRIPTION CORRESPONDS TO A PART OF THE FUNCTION.

THE COURT: ALL RIGHT. WHAT ELSE?

MR. STEPHENS: OKAY. I'LL SHOW YOU.

SO BASICALLY THE OTHER THINGS THAT ARE SHOWN IN THE BOX WITH THE DOWNLOAD DMA LOGIC AND THE UPLOAD DMA LOGIC, AND THE REASON WE THINK THAT IS BECAUSE THE SPEC TELLS YOU THAT IS THE CASE.

SO, AGAIN, THE QUOTE THAT I HAVE UP HERE NOW IN COLUMN TWO, LINE SIX TO 15, TIES THE HOST INTERFACE LOGIC EXPLICITLY TO THE RECITED FUNCTIONS OF MANAGING DATA TRANSFERS IN OPERATIONS TRANSPARENT TO THE HOST.

BUT THEN IT GOES ON TO DESCRIBE IN ANOTHER PART OF THE SPECIFICATION THAT THE HOST INTERFACE LOGIC INCLUDES THESE COMPONENTS: DOWNLOAD DMA LOGIC AND TRANSMIT DESCRIPTOR LOGIC USED IN THE TRANSMIT PROCESS, AND VIEW LOGIC, TRANSFER DESCRIPTOR LOGIC, AND UPLOAD DMA LOGIC USED IN THE RECEIVE PROCESS.

AND THEN, RIGHT AFTER THAT AT THIS POINT IN COLUMN NINE IT SAYS:

"THESE MODULES BASICALLY MANAGE COMMUNICATION OF DATA BETWEEN THE INDEPENDENT MEMORY AND THE HOST," EXACTLY THEIR RECITED FUNCTIONS.

SO EACH OF THOSE THINGS THAT ARE SHOWN IN BOXES 107 AND 108 ARE EXPLICITLY TIED TO THE RECITED FUNCTION BY THE SPECIFICATION. AND THAT IS WHAT SECTION 112 PARAGRAPH SIX REQUIRES YOUR HONOR TO LOOK TO TO IDENTIFY CORRESPONDING STRUCTURE, WHAT THE SPECIFICATION SAYS IS USED TO PERFORM THAT FUNCTION.

THE COURT: WELL, AND YOUR ARGUMENT IS I CAN DO THAT WITHOUT RUNNING THE RISK THAT I AM DEFINING THE CLAIM BY REFERENCE TO MULTIPLE POTENTIAL EMBODIMENTS --

MR. STEPHENS: YES.

THE COURT: -- BECAUSE I STILL HAVE TO WORRY ABOUT THAT, DON'T I? OR DO I NOT? IN OTHER WORDS, IF I'M IN A 112-6 WORLD, AND THERE ARE EMBODIMENTS, I HAVE TO PAY ATTENTION TO THE WRITTEN DESCRIPTION BECAUSE THAT'S WHERE I DRAW MY DEFINITION OF

"STRUCTURE."

BUT DON'T I ALSO HAVE TO BE CAUTIOUS ABOUT IMPOSING MULTIPLE EMBODIMENTS AS BEING THE DEFINITION OF WHAT IS A NECESSARY DESCRIPTION OF WHAT THE STRUCTURE IS?

MR. STEPHENS: WELL, YES AND NO. SO YOU DO HAVE TO BE MINDFUL OF EMBODIMENTS. AND THEY WOULD, I THINK AS A GENERAL MATTER, BE CONSIDERED ALTERNATIVES.

SO, FOR EXAMPLE, YOU MIGHT HAVE TWO DIFFERENT TYPES OF DOWNLOAD DMA LOGIC, LET'S SAY. AND THEY WOULD BOTH BE CORRESPONDING STRUCTURE, BUT YOU COULD FIND INFRINGEMENT BY FINDING AN EQUIVALENT OF EITHER ONE OF THEM. IT WOULDN'T HAVE TO BE THE EQUIVALENT OF BOTH.

SO THEY WOULD BOTH BE THE STRUCTURE THAT IS TIED TO PERFORMING THE FUNCTION BY THE SPECIFICATION. BUT BECAUSE TWO DIFFERENT TYPES OF DOWNLOAD DMA LOGIC ARE DISCLOSED, THEN INFRINGEMENT WOULD ULTIMATELY BE JUDGED BY EQUIVALENTS TO EITHER ONE OF THOSE EMBODIMENTS.

THAT'S NOT THE SITUATION HERE, HOWEVER, BECAUSE THERE'S NOT SEPARATE EMBODIMENTS DISCLOSED. THIS IS THE ONLY ONE. AND YOU CAN'T USE THE DMA LOGIC IN THE DISCLOSED EMBODIMENT WITHOUT WRITING A TRANSMIT DESCRIPTOR TO THE TRANSMIT DESCRIPTOR BUFFER.

THE TRANSMIT DESCRIPTOR IS WHAT IDENTIFIES THE DATA TO BE DOWNLOADED. AND THE DOWNLOAD DMA LOGIC USES THE TRANSMIT DESCRIPTOR TO FIGURE OUT WHERE TO DOWNLOAD DATA FROM.

SO THESE AREN'T SEPARATE EMBODIMENTS. THERE'S ONLY A SINGLE EMBODIMENT. AND EACH OF THE PIECES OF STRUCTURE THAT THE SPECIFICATION EXPLICITLY TIES TO PERFORMING THE RECITED FUNCTION IS A PART OF THAT SINGLE EMBODIMENT.

THE COURT: BUT AREN'T THOSE TRANSMIT DESCRIPTORS SOMETHING THAT HELP THE FUNCTION BUT AREN'T NECESSARILY THE FUNCTION? IN OTHER WORDS, I KNOW THAT I NEED WAYS OF KEEPING TRACK OF THINGS. THAT'S WHAT THESE THINGS DO, THE MAPPING TRANSMIT DESCRIPTORS DO SOMETHING THAT HELPS IT. BUT IS THAT THE FUNCTION?

MR. STEPHENS: THE FUNCTION, AGAIN, IS MANAGING DATA TRANSFERS BETWEEN THE HOST ADDRESS SPACE AND THE BUFFER MEMORY AND OPERATION --

THE COURT: SO SOMETHING MANAGES IT. AND IT MIGHT PULL ON A NUMBER OF RESOURCES TO HELP IT DO THAT JOB, BUT THE CORRESPONDING STRUCTURE IS THE MANAGING STRUCTURE, NOT THE THINGS THAT IT MIGHT CALL ON. BECAUSE EVEN THE BUFFERS THEMSELVES AS THINGS ARE BEING MOVED IN AND OUT ARE PART OF HOW IT DOES ITS MANAGING JOB, BECAUSE IT'S GOT TO LOOK AT THAT. BUT THE BUFFERS AREN'T NECESSARY TO THAT, ARE THEY?

MR. STEPHENS: NO, I AGREE THEY ARE NOT. BUT THAT'S BECAUSE THE RECITED FUNCTION IS MOVING DATA BETWEEN ONE THING AND THE OTHER. SO TO MANAGE THAT MOVEMENT BETWEEN DOESN'T REQUIRE THE THINGS THAT ARE AT THE END.

BUT I BELIEVE THAT BOTH THESE, JUST TO STICK WITH OUR

EXAMPLE, THE TRANSMIT DESCRIPTORS AND THE DOWNLOAD DMA LOGIC ARE BOTH STRICTLY NECESSARY TO THAT PROCESS OF MANAGING THE DATA TRANSFER, BECAUSE THE DOWNLOAD DMA LOGIC CAN'T TRANSFER DATA UNLESS IT KNOWS WHAT TO TRANSFER.

AND THE ONLY WAY THAT IT KNOWS TO TRANSFER DATA IS TO LOOK INSIDE THE TRANSMIT DESCRIPTOR. AND I SHOULD MENTION ALSO THAT THE TRANSMIT DESCRIPTOR IS ALSO PART OF THE EMBODIMENT THAT ACTUALLY MOVES THE DATA, RIGHT?

IN OTHER WORDS, THE WAY THIS WORKS IS THE HOST SYSTEM WRITES A TRANSMIT DESCRIPTOR TO THE TRANSMIT AREA OF THE ADAPTOR INTERFACE ADDRESS BLOCK.

AND THERE'S A MAP OF THAT SHOWN. I BELIEVE IT'S FIGURE FOUR.

THE HOST WRITES IT, A TRANSMIT DESCRIPTOR, AND THAT TRANSMIT DESCRIPTOR ACTUALLY TYPICALLY INCLUDES A PORTION OF THE FRAME.

THE COURT: BUT IN THE DEPENDENT CLAIM 12 I'M GIVEN A JOB FOR THE TRANSMIT DESCRIPTOR. IT'S TOLD, IT SAYS, "FOR MAPPING." IT DOESN'T SAYING ANYTHING FOR MANAGING. IT'S "FOR MAPPING."

MR. STEPHENS: WELL, IT'S -- YOU ARE GIVING THE JOB OF TRANSMIT DESCRIPTOR LOGIC, NOT THE TRANSMIT DESCRIPTOR.

SO THE TRANSMIT DESCRIPTOR LOGIC MAPS TRANSMIT DESCRIPTORS FROM THE HOST SYSTEM TO THE BUFFER MEMORY.

THE COURT: AND THAT'S EVERY TIME THAT PHRASE IS USED

IT IS FOR MAPPING. AND SO MY -- I UNDERSTAND YOUR ARGUMENT. I'M NOT SURE I WILL ADOPT IT AS TO WHETHER OR NOT IF I'M GIVEN THE FUNCTION OF MANAGING DATA TRANSFERS BETWEEN TWO THINGS, DO I NECESSARILY INCLUDE AS CORRESPONDING STRUCTURE SOMETHING THAT IS GIVEN A JOB IN THE CLAIM, BUT IT'S NOT THAT JOB. IT'S GIVEN SOME OTHER JOB THAT MIGHT BE HELPFUL TO THE MANAGER, BUT NOT NECESSARILY TO IT.

MR. STEPHENS: WELL, IMPORTANTLY, YOUR HONOR, THAT MAPPING IS ACTUALLY HOW THE DATA TRANSFER IS ACCOMPLISHED.

THE COURT: YOU SAID THAT BEFORE, AND I MADE THAT NOTE. SO I NEED TO PAY ATTENTION TO: IS IT NECESSARY BECAUSE YOU CAN'T MANAGE WITHOUT IT?

MR. STEPHENS: YES. AND I THINK A CAREFUL READING OF THE SPECIFICATION SHOWS THAT THAT IS THE CASE.

AND THAT MAPPING IS ACCOMPLISHED BY USING THESE STRUCTURES THAT ARE SHOWN HERE IN FIGURES NINE AND 11. SO, AGAIN, STICKING WITH THE TRANSMIT DESCRIPTOR LOGIC, WHICH FOR SOME REASON I CAN'T UNDERSTAND IS DESCRIBED AS "HOST DESCRIPTOR LOGIC" IN THESE FIGURES. IT USES THESE POINTERS TO PERFORM THE MAPPING. AND SO THE CURRENT HOST DESCRIPTOR POINTER CHD AND THE HOST WRITE POINTER THERE ATTACH TO THE HOST DESCRIPTOR LOGIC 150.

ALL THESE, REMEMBER, ARE SHOWN AS A PART OF THE HOST INTERFACE LOGIC.

WHAT THOSE POINTERS DO IS THAT WHEN THE HOST WRITES A

TRANSMIT DESCRIPTOR, WHICH ACTUALLY INCLUDES FRAME DATA, AS WELL AS A POINTER TO THE HOST MEMORY, TO THE TRANSMIT REGISTERS, WHICH ARE SHOWN THERE ON THE LEFT SIDE OF FIGURE NINE, AND ALSO SHOWN ARE THE ADAPTER INTERFACE ADDRESS BLOCK IN 101 IN FIGURE THREE.

THOSE POINTERS SHOW THAT PERFORM THE MAPPING, AND WHAT HAPPENS IS THE HOST WRITE IS REMAPPED DIRECTLY INTO THE TRANSMIT DESCRIPTOR BUFFER IN THE ADAPTER MEMORY.

SO BY PERFORMING THAT MAPPING THE DATA IS ACTUALLY MOVED FROM ONE ADDRESS SPACE TO ANOTHER: THE ADDRESS SPACE OF THE HOST INTO THE BUFFER ADDRESSES.

SO IT IS THE POINTERS THAT PERFORM BOTH THE MANAGEMENT AND THE ACTUAL DATA TRANSFER, BECAUSE THEY IDENTIFY -- THEY MANAGE IT BY IDENTIFYING THE PLACE IT'S GOING TO GO AND THE ACTUAL TRANSFER. AT LEAST THE ONLY MECHANISM DESCRIBED IN THE PATENT FOR PERFORMING THE TRANSFER IS THAT THE WRITE IS MAPPED INTO THOSE NEW ADDRESSES.

SO THESE STRUCTURES, YOUR HONOR, INCLUDING THE POINTERS, BECAUSE THE POINTERS ARE THE ONLY THING THAT EVEN COMES CLOSE TO BEING STRUCTURE. THERE'S NO ALGORITHMS. THERE'S NO CIRCUITRY. THERE'S JUST LOGIC. THE LOGIC INCLUDES POINTERS.

WE DON'T THINK THAT'S ENOUGH. BUT TO THE EXTENT THERE'S ANYTHING THAT EVEN RESEMBLES STRUCTURE IN THESE PATENTS IT'S THESE POINTERS THAT PERFORM THE DATA TRANSFER AND THE MANAGEMENT OF THE DATA TRANSFER AT THE SAME TIME BY REMAPPING

THE HOST ADDRESS SPACE INTO THE BUFFER.

AND, AGAIN, IT'S TIED EXPLICITLY TO THESE FUNCTIONS OF:

"THE HOST DESCRIPTOR LOGIC GENERATES POINTERS FOR THE TRANSMIT DESCRIPTOR RING BUFFER ON THE ADAPTER MEMORY, WHICH IDENTIFY THE CURRENT POSITION OF HOST ACCESSES FOR WRITING DESCRIPTORS IN THE TRANMIT DESCRIPTOR RING BUFFER."

SO THAT PERFORMS THIS MAPPING BY WHICH A HOST WRITE TO THE ADAPTER INTERFACE ADDRESSES IS REMAPPED AND SORT OF AUTOMAGICALLY TRANSFORMED INTO A HOST WRITE INTO THE BUFFER MEMORY.

THE POINTERS ARE WHAT ACCOMPLISHES THAT. AND I DON'T MEAN TO BELABOR THIS, BUT THE SUBSEQUENT SLIDES WE HAVE WALK THROUGH THESE OTHER POINTERS FOR THE OTHER PORTIONS OF THE LOGIC THAT ARE ALL A PART OF THE HOST INTERFACE LOGIC.

AND THE SYSTEM CAN'T WORK IF YOU TAKE OUT PART OF THIS, RIGHT? SO IF YOU TAKE OUT THE HOST DESCRIPTOR LOGIC AND DOWNLOAD DMA LOGIC, WON'T WORK, BECAUSE IT DOESN'T HAVE ANY WAY OF FIGURING OUT WHAT THE MECHANISM IS TO MOVE DATA FROM ONE ADDRESS SPACE TO THE OTHER.

SIMILARLY, ON THE RECEIVE SIDE YOU HAVE UPLOAD DMA LOGIC WITH A RECEIVE TAIL POINTER PREVIEW LOGIC WITH A CURRENT FRAME POINTER IN IT.

AND THE PREVIEW LOGIC IS QUITE INTERESTING BECAUSE IT

DOES EXACTLY THE SAME THING. THE HOST READS TO WHAT IS CALLED "A LOOKBUF REGISTER," WHICH IS JUST AN ADDRESS IN THE BLOCK OF ADDRESSES THAT IS ALLOCATED TO THE ADAPTER.

WHEN THE HOST READS THAT ADDRESS, WHAT HAPPENS IS THAT CURRENT FRAME POINTER IS POINTING TO A LOCATION IN THE BUFFER MEMORY. AND THAT READ IS AUTOMAGICALLY REMAPPED INTO THE BUFFER MEMORY. AND WHAT THE HOST GETS BACK WHEN IT READS THAT ADDRESS IS THE DATA THAT'S IN THE RECEIVE BUFFER. SO THE ACTUAL MOVEMENT OF THE DATA FROM THE BUFFER MEMORY INTO THE HOST ADDRESS SPACE IS ACCOMPLISHED BY THOSE POINTERS.

THE COURT: WELL, YOU CERTAINLY HAVE CONVINCED ME THAT IN THE DESCRIPTION THE INVENTORS SHOW VARIOUS WAYS TO PERFORM THE HOST INTERFACE PROCESS. BUT I HAVE TO FIGURE OUT WHAT IS THE "HOST INTERFACE MEANS." AND I'M STILL TROUBLED BY THE FACT THAT IN THE DEPENDENT CLAIMS THE WHEREIN THAT MEANS IS THIS TRANSMIT DESCRIPTOR LOGIC.

THAT IS AN ADDED THING THAT COMES OUT OF THE DEPENDENT CLAIM, AND I CAN'T IGNORE THE FACT THAT LATER ON IN THE SPECIFICATION I CAN SEE WHAT IS THE CORRESPONDING STRUCTURE FOR THAT.

AND SO IF I WERE TO STATE THE LAW NOW FOR CLAIM CONSTRUCTION IT WOULD BE, AS YOU'RE ASKING ME TO ADOPT IT, IF AN EMBODIMENT THAT IS CLEARLY CALLED OUT IN THE DEPENDENT CLAIM HAS A STRUCTURE THAT IS ATTACHED TO THAT NEW FUNCTION, THAT MORE LIMITED FUNCTION THAT IS CALLED OUT IN THE DEPENDENT CLAIM, YOU

CAN USE THAT. YOU CAN USE THAT AS A NECESSARY ELEMENT OF THE GENERAL, THE MORE BROAD CLAIM.

AND I HAVEN'T READ A CASE THAT SAYS THAT YET. IF YOU HAVE ONE, I'D LOVE TO READ IT.

MR. STEPHENS: WE DO, YOUR HONOR. THE LAITRIAM CASES THAT ARE CITED IN OUR BRIEFS SAY THAT EXPLICITLY.

THE COURT: ALL RIGHT. SO THAT'S WHAT I'LL LOOK AT. THE LAITRIAM CASES?

MR. STEPHENS: LAITRIAM, L-A-I-T-R-I-A-M. AND THERE'S A FEW OTHERS CITED ALONG WITH THAT.

IT'S WELL-ESTABLISHED, YOUR HONOR, THAT THE JUDICIALLY CREATED DOCTRINE OF CLAIM DIFFERENTIATION DOES NOT TRUMP 112-6.

THE COURT: NO, THAT'S NOT THE STATEMENT. THAT WASN'T MY STATEMENT. I UNDERSTAND THAT.

MR. STEPHENS: RIGHT.

THE COURT: THAT'S A VERY GENERAL STATEMENT THAT I'VE READ TONS OF TIMES, AND I UNDERSTAND THAT CLAIM DIFFERENTIATION IS ONE OF THE MERE TOOLS THAT WE USE.

BUT IT IS A USEFUL ONE. BUT I HAVEN'T SEEN A CASE WHERE IT SAYS THE COURT IN 112-6 CONSTRUCTION WHERE IT IS LOOKING FOR CORRESPONDING STRUCTURE SHOULD INCLUDE ANYTHING OTHER THAN THE NECESSARY COMPONENTS THAT PERFORM THAT FUNCTION.

AND WHEN A NEW FUNCTION IS ADDED BY A DEPENDENT CLAIM, AND THERE'S A STRUCTURE THAT IS TIED TO THAT, UNLESS YOU

FIND IT'S NECESSARY AND -- THAT'S WHY I MADE A NOTE AS TO THE NECESSARY. BUT CLEARLY WHEN I SEE A NEW STRUCTURE THAT IS TIED TO A DEPENDENT CLAIM, IT CAUSES ME TO RAISE A QUESTION WHETHER OR NOT IT'S NECESSARY FOR THE GENERAL CLAIM.

MR. STEPHENS: FAIR ENOUGH, YOUR HONOR.

THE COURT: AND SO BECAUSE BY CALLING IT OUT AND TYING IT INTO SPECIFICATION WHAT THE INVENTOR IS SAYING:

"AH, I'VE GOT A WAY OF NARROWING WHAT THIS IS."

AND THAT IS A VERY DIFFERENT -- THAT'S A WHOLE DIFFERENT CLAIM THAN MY FIRST ONE.

MR. STEPHENS: WELL, THIS IS PRECISELY WHY MEANS-PLUS-FUNCTION CLAIMS ARE TREATED SO DIFFERENTLY THAN RUN-OF-THE-MILL CLAIMS, RIGHT? THE CLAIM DIFFERENTIATION WORKS IN THE RUN-OF-THE-MILL CLAIMS.

BUT THESE CASES, THE LAITRIAM CASES SAY, I THINK, EXACTLY WHAT YOUR HONOR IS THINKING, WHICH IS THAT AS LONG AS THE STRUCTURE IS NECESSARY IF YOU CITE IT IN A DEPENDENT CLAIM IT DOESN'T TAKE IT OUT OF THE CORRESPONDING STRUCTURE.

THE COURT: THAT'S THE PROPOSITION. ALL RIGHT. THANK YOU.

MR. STEPHENS: OKAY. SO AND TO TURN A LITTLE BIT TO WHETHER OR NOT THE LOGIC THAT IS ACTUALLY DESCRIBED IN THE SPECIFICATIONS IS SUFFICIENT, THERE'S ANOTHER CASE, A FAIRLY RECENT CASE FROM THE FEDERAL CIRCUIT, ERGO LICENSING, WHERE THE CLAIMS WERE DIRECTED TO A CONTROL MEANS. AND THEN, THE ONLY

SUPPORT FOR THE CONTROL MEANS IN THE SPECIFICATION WAS A CONTROL DEVICE, VERY MUCH LIKE THIS: JUST A BOX LABELED "CONTROL DEVICE."

AND THE FEDERAL CIRCUIT SAID THAT THAT DOESN'T ADD ENOUGH. TO JUST RELABEL THE SAME BOX AS "CONTROL DEVICE" ISN'T SUFFICIENT STRUCTURE TO SUPPORT A 112-6 CLAIM AND HELD THAT THE CLAIMS WERE INDEFINITE.

THAT'S THE SITUATION WE HAVE HERE. SO YOU CAN GO THROUGH THIS PROCESS OF IDENTIFYING THE BOXES LABELED "LOGIC" IN THE SPECIFICATION THAT THE SPEC SAYS PERFORM THE RECITED FUNCTIONS. AND WE TRIED TO DO THAT BOTH IN OUR BRIEF AND IN THESE FIGURES.

BUT THEN, WHEN YOU STEP BACK AND SAY:

"WELL, WHAT IS IN THOSE BOXES?" THE PATENT DOESN'T TELL YOU. IT IS JUST A BOX LABELED WITH THE FUNCTION FOLLOWED BY THE WORD "LOGIC" IN SOME CASES.

AND THAT IS NOT SUFFICIENT STRUCTURE. IF YOU ARE GOING TO USE A 112-6 TYPE CLAIM WHERE YOU'RE ALLOWED TO CLAIM FUNCTIONALLY, BECAUSE YOU'RE NOT OTHERWISE, THEN THE QUID PRO QUO IS THAT YOU'RE LIMITED TO THE STRUCTURE DISCLOSED IN THE SPECIFICATION FOR PERFORMING THAT FUNCTION.

IF YOU DON'T DISCLOSE AN ACTUAL STRUCTURE FOR PERFORMING THAT FUNCTION AND INSTEAD YOU JUST SAY A GIZMO FOR PERFORMING THE FUNCTION -- AND THAT'S ESSENTIALLY WHAT THEY HAVE DONE BY JUST PUTTING -- CALLING IT ALL "LOGIC" -- THEN YOU'RE

NOT ENTITLED TO USE 112-6, AND THE CLAIM'S INVALID.

THE COURT: WELL, "LOGIC" IS DIFFERENT FROM "GIZMO," ISN'T IT, IN THE SENSE THAT LOGIC DOES MEAN SOMETHING? IT MIGHT BE A DEBATE AS TO WHETHER IT'S HARDWARE OR SOFTWARE, BUT IT'S NOT LIKE "GIZMO," IS IT?

MR. STEPHENS: WELL, I THINK IT IS LIKE "GIZMO," BECAUSE IT DOESN'T TELL YOU WHAT GIZMO -- WHAT IS USED TO IMPLEMENT IT, RIGHT? IF IT DID SUGGEST AN IMPLEMENTATION, YOUR HONOR MIGHT BE RIGHT. BUT IT DOESN'T. "LOGIC" IS A TERM THAT IS SO BROAD IN SCOPE --

THE COURT: BUT COULD -- LET ME ASK THIS QUESTION: COULD, IF I'M LOOKING FOR STRUCTURE, COULD LOGIC AS A SOFTWARE FUNCTION, A STRUCTURE, MUSTN'T IT BE HARDWARE?

MR. STEPHENS: IF THE SPECIFICATION, FOR EXAMPLE, HAD A SNIPPET OF CODE THAT SAID:

"HERE'S HOW YOU MOVE DATA FROM THE INTERFACE -- FROM THE HOST ADDRESS SPACE INTO THE BUFFER," AND THEN YOU USED THE WORD "LOGIC," I WOULD SAY THAT WOULD BE FINE.

THE COURT: ALL RIGHT.

MR. STEPHENS: YES. "LOGIC" IS A WORD THAT COULD COVER IT.

BUT THERE'S NOTHING LIKE THAT IN THE SPECIFICATION. AND THAT'S WHY IT FAILS.

WE HAVE SOME MORE DISCUSSION OF THIS WHEN WE GET TO THE SEPARATE LOGIC TERMS.

THE COURT: ALL RIGHT.

MR. STEPHENS: BUT AT ANY RATE, YOUR HONOR, TO THE EXTENT YOU FIND THE CLAIMS NOT INDEFINITE, THIS IS THE STRUCTURE THAT WE BELIEVE CORRESPONDS TO IT. AND THIS MAPS ON VERY CLOSELY TO FIGURE THREE, FIGURE NINE AND FIGURE 11 AND THE DISCUSSION THAT DESCRIBES THAT.

THE COURT: THANK YOU.

MR. STEPHENS: MOVING ON TO THE CLAIM 13, HOST INTERFACE MEANS, IT'S VERY SIMILAR, BUT SLIGHTLY DIFFERENT, AS I THINK YOUR HONOR HAS POINTED OUT.

CLAIM ONE, IT'S VERY INSTRUCTIVE, I THINK, TO COMPARE THE RECITED FUNCTIONS.

CLAIM ONE HAS:

"MANAGING DATA TRANSFERS BETWEEN THE HOST ADDRESS SPACE AND THE BUFFER MEMORY."

CLAIM 13 HAS ACTUALLY THREE SEPARATE FUNCTIONS:

"MAPPING DATA ADDRESSED TO THE FIRST AREA INTO THE TRANSMIT BUFFER; MAPPING DATA INTO THE RECEIVE BUFFER INTO THE SECOND AREA."

AND THESE AREAS ARE IN A PRESPECIFIED BLOCK OF HOST ADDRESSES.

AND THEN, THE LAST IS:

"UPLOADING DATA FROM THE RECEIVE BUFFER INTO THE HOST."

BUT IF YOU LOOK AT THOSE THREE FUNCTIONS, WHAT YOU

SEE IS THAT THEY ARE ALL DATA TRANSFERS BETWEEN THE HOST ADDRESS SPACE AND THE BUFFER MEMORY.

SO THEY ARE, IN EFFECT, PIECES OF THE KINDS OF TRANSFERS THAT ARE BEING MANAGED BY CLAIM ONE. AND THAT, I THINK, HELPS SHOW WHY THE STRUCTURES ARE, IN FACT, VERY SIMILAR.

SO THE CORRESPONDING DESCRIPTION FOR THIS FUNCTION IN CLAIM 13 IS ACTUALLY A SUBSET OF THE STRUCTURE THAT CORRESPONDS TO CLAIM ONE.

AND IF YOU JUST TAKE THOSE THREE SEPARATELY RECITED FUNCTIONS ONE AT A TIME, THE FIRST ONE SAYS:

"MAPPING DATA ADDRESSED TO THE FIRST AREA INTO THE TRANSMIT BUFFER."

AND, AGAIN, THE FIRST AREA, THE FIRST AND SECOND AREAS ARE PART OF THIS PRESPECIFIED BLOCK OF ADDRESSES. AND THOSE WOULD CORRESPOND TO THE ADAPTER INTERFACE ADDRESS.

AND IT'S PRETTY CLEAR. AND I HAVE ANOTHER SLIDE THAT SHOWS THAT, I THINK, IN A MINUTE.

SO YOU CAN TELL THAT THAT IS PERFORMED BY THE BOX 107 BECAUSE THE ARROW POINTS TOWARDS THE BUFFER MEMORY. SO IT'S MAPPING DATA FROM THE FIRST AREA IN THE ADAPTER BLOCK INTO THE TRANSMIT BUFFER. SO IT'S PERFORMED BY THAT.

NOW, BECAUSE THE FIRST ADDRESS BLOCK IS IN THIS PRESPECIFIED BLOCK OF ADDRESSES, YOU KNOW THAT IT'S NOT SOMETHING OUTSIDE OF THAT. THE DOWNLOAD DMA LOGIC DOWNLOADS DATA FROM THE HOST. SO IT'S DOESN'T DOWNLOAD DATA FROM THE ADAPTER

INTERFACE. OTHERWISE, IT WOULD BE DOWNLOADING DATA FROM ITSELF.

AND AS A RESULT YOU CAN TELL THAT THIS FIRST FUNCTION ISN'T PERFORMED BY THE DOWNLOAD DMA LOGIC, BECAUSE THE DOWNLOAD DMA LOGIC DOESN'T MOVE DATA FROM THAT PRESPECIFIED BLOCK OF HOST ADDRESSES IN THE ADAPTER INTERFACE BLOCK INTO THE ADAPTER MEMORY.

SO THE RESULT IS YOU CAN TELL THAT THE CORRESPONDING STRUCTURE THAT'S APPROPRIATE FOR THIS FIRST FUNCTION IS THE TRANSMIT DESCRIPTOR LOGIC, BECAUSE IT DOES DO THAT. IT MAPS ADDRESSES IN THE ADAPTER INTERFACE BLOCK 101 INTO THE ADAPTER MEMORY.

THE NEXT MAPPING THAT'S REQUIRED BY THE FUNCTION IS MAPPING DATA FROM THE RECEIVE BUFFER INTO THE -- THIS PRESPECIFIED BLOCK OF ADDRESSES. AGAIN, BECAUSE OF THE DIRECTION, YOU CAN TELL THAT IT'S SOMETHING PERFORMED BY 108.

AND WHAT I'LL SHOW YOU IN MINUTE IS THAT IS YOU CAN ALSO TELL THAT IT'S THE VIEW LOGIC.

BUT MOVING ON FOR THE MOMENT TO THE UPLOAD DMA LOGIC, THAT'S ACTUALLY RECITED EXPLICITLY AS THE THIRD FUNCTION FOR THE HOST INTERFACE MEANS IN CLAIM 13, UPLOADING DATA FROM THE RECEIVE BUFFER TO THE HOST.

AND I WOULD, AGAIN, I GUESS, JUST POINT OUT THAT WHEN YOU ARE -- THE DMA LOGIC MOVES DATA TO ADDRESSES THAT ARE OUTSIDE THE TO AND FROM THAT ARE ADDRESSES OF THE HOST ADDRESS SPACE THAT ARE OUTSIDE THE ADAPTER INTERFACE BLOCK.

THE OTHER PIECES MOVE DATA THAT ARE INSIDE THAT ADDRESS BLOCK TO AND FROM THE ADAPTER MEMORY.

SO WITH THAT PREFACE, YOU CAN TAKE A LOOK AT THE CORRESPONDING STRUCTURE FOR CLAIM ONE AND SEE WHAT IS MISSING. IT'S THE DOWNLOAD LOGIC. THE UPLOAD LOGIC IS EXPLICITLY RECITED. THE OTHER TWO FUNCTIONS ARE MAPS BETWEEN THE ADDRESS ADAPTER INTERFACE BLOCK OF HOST ADDRESSES. THE THING THAT IS MISSING IS THE DOWNLOAD DMA LOGIC.

SO IF YOU TAKE THE STRUCTURE CORRESPONDING TO CLAIM ONE AND JUST DELETE THE DOWNLOAD DMA LOGIC YOU'LL GET THE APPROPRIATE STRUCTURE.

AND I'LL APPLY THIS TO THE SPECIFICATION IN A LITTLE MORE DETAIL IN A MOMENT. BUT FIRST LET'S TAKE A LOOK AT WHAT U.S. ETHERNET PROPOSED.

WELL, THEY HAVE THE SAME PROBLEM THEY HAD BEFORE. THEY INCLUDED THE BUFFER MEMORY, THE HOST SYSTEM AND INTERCONNECTING CIRCUITRY. AND I'VE ALREADY EXPLAINED WHY THAT'S NOT APPROPRIATE.

SO LET'S GO BACK TO WHAT THE SPECIFICATION SAYS ABOUT THE FUNCTIONS THAT WE SEE IN THE CLAIM. SO A PART OF THE SORT OF CONTEXT OF THE THREE RECITED FUNCTIONS IS THIS PRESPECIFIED BLOCK OF HOST ADDRESSES OF LIMITED SIZE DEFINING FIRST AREA AND SECOND AREA.

AND YOU NEED THOSE TWO AREAS TO UNDERSTAND THE MAPPING THAT IS DESCRIBED IN THE FUNCTIONS. WELL, THE

SPECIFICATION TELLS YOU THAT ADAPTER INTERFACE IS A PRESPECIFIED BLOCK OF HOST ADDRESS SPACE.

SO IN INTERPRETING THE STRUCTURE THAT CORRESPONDS TO THIS MEANS, THAT'S WHAT IT'S REFERRING TO IN THE CLAIM WHEN IT'S TALKING ABOUT:

"A PRESPECIFIED BLOCK OF HOST ADDRESSES OF LIMITED SIZE."

NOW, I WILL ALSO MENTION THE FIRST AND SECOND AREA WITHIN THAT.

AND FIGURE FOUR IS A MAP OF THE ADAPTER INTERFACE ADDRESS BLOCK. SO THERE ARE SEPARATE AREAS THAT ARE SHOWN WITHIN THAT ADAPTER INTERFACE BLOCK. YOU HAVE THE TRANSMIT AREA, THE TRANSFER AREA, THE LOOK BUFFER. THESE ARE ALL AREAS IN THERE.

AND YOU'LL BE ABLE TO TELL FROM LOOKING AT THIS WHICH IS THE FIRST AND SECOND AREA THAT CORRESPONDS TO THE MAPPINGS THAT ARE RECITED BY THE CLAIM.

AGAIN, THE FIRST MAPPING IS A MAPPING FROM DATA, MAPPING DATA ADDRESSED TO THE FIRST AREA INTO THE TRANSMIT BUFFER.

UNSURPRISINGLY, THE SPECIFICATION TELLS YOU THAT IT IS THE TRANSMIT AREA THAT IS MAPPED THAT WAY. IT'S MAPPED INTO A TRANSMIT DESCRIPTOR RING IN THE INDEPENDENT ADAPTER MEMORY.

SO THE STRUCTURE THAT CORRESPONDS TO THAT FUNCTION IS THE STRUCTURE THAT MAPS THE TRANSMIT AREA INTO THE TRANSMIT DESCRIPTOR RING.

SIMILARLY, THE SECOND MAPPING IS MAPPING DATA INTO RECEIVE BUFFER INTO THE SECOND AREA. WELL, THE STRUCTURE THAT IS DESCRIBED FOR DOING THAT IS -- OR MORE THE AREA THAT DOES THAT IS THE LOOK BUFFER. THE LOOK BUFFER PROVIDES A READ ONLY WINDOW INTO THE RECEIVE RING BUFFER.

SO THE STRUCTURE THAT PROVIDES THAT MAPPING, THE MAPPING FROM THE RECEIVE BUFFER INTO THE LOOK BUFFER IS THE STRUCTURE THAT CORRESPONDS TO THIS MAPPING.

AND, LASTLY, THE UPLOAD LOGIC IS PRETTY SIMPLE. IT TIES DIRECTLY TO THE UPLOAD LOGIC THAT IS DESCRIBED IN THE SPECIFICATION.

BUT, AGAIN, EVEN THE FUNCTION IS SHOWN AND CORRESPONDS TO THE DESCRIPTION.

SO IF YOU ARE LOOKING FOR THE ACTUAL STRUCTURES THAT PERFORM THESE MAPPINGS, AGAIN, THESE ARE THE SAME -- IT'S A SUBSET OF THE POINTERS THAT WE ALREADY TALKED ABOUT WITH CLAIM ONE.

SO THE HOST DESCRIPTOR LOGIC HAS THESE TWO POINTERS: THE CHD, THE CURRENT HOST DESCRIPTOR POINTER, AND HOST WRITE POINTER. THOSE MAP THE TRANSMIT AREA INTO THE TRANSMIT DESCRIPTOR RING BUFFER. THAT IS THE STRUCTURE THAT PERFORMS THAT FIRST MAPPING.

THE PREVIEW LOGIC WITH ITS CURRENT FRAME POINTER IS WHAT MAPS THE RECEIVE BUFFER INTO THE LOOKBUF AREA, SO THAT WHEN THE HOST READS AN ADDRESS IN THAT AREA, WHAT IT GETS IS DATA OUT

OF THE RECEIVE BUFFER.

AND THEN, THE UPLOAD DMA LOGIC ALSO HAS ITS POINTER THAT ALLOWS IT TO PERFORM ITS FUNCTION.

THOSE ARE THE THINGS THAT PERFORM THE RECITED FUNCTIONS.

NOW, AGAIN, WE DON'T THINK THAT THOSE ARE SUFFICIENT STRUCTURE BECAUSE THEY ARE NOT STRUCTURE. THE SPECIFICATION NEVER TELLS YOU HOW THEY ARE GENERATED, NEVER TELLS YOU WHAT THEY ARE, WHERE THEY ARE STORED, WHETHER THEY ARE STORED IN MEMORY OR REGISTER OR SOME OTHER TYPE OF THING.

NO ALGORITHM OR CIRCUITRY IS DISCLOSED FOR MANAGING THOSE POINTERS. HOW YOU CHANGE THEM, WHEN YOU CHANGE THEM, WHAT VALUES ARE STORED IN THEM, JUST DOESN'T SAY.

AT ANY RATE, THIS IS THE DESCRIPTION IN THE SPECIFICATION THAT WE BELIEVE CORRESPONDS TO THE THREE DIFFERENT MAPPINGS RECITED BY THIS LIMITATION.

NOW, LET'S MOVE ON TO THE NETWORK INTERFACE CLAIMS. I'M GOING TO PICK UP THE PACE HERE A LITTLE BIT. I'LL TRY TO TALK SLOWLY, BUT MOVE MORE QUICKLY THROUGH THE MATERIAL.

SO THE NETWORK INTERFACE MEANS, AS WE TALKED ABOUT, IS THE PART THAT WOULD BE ON THE RIGHT SIDE OF -- I DON'T HAVE A GOOD FIGURE FOR THAT. SORRY ABOUT THAT.

THE NETWORK INTERFACE MEANS IS THE RIGHT SIDE OF FIGURE THREE, SO IT SITS BETWEEN THE BUFFER MEMORY AND THE NETWORK TRANSCEIVER. AND IT MOVES THE DATA BETWEEN THE BUFFER

MEMORY AND THE NETWORK TRANSCEIVER.

SO WE DON'T HAVE A DISPUTE THERE THAT 112-6 APPLIES. THE PARTIES AGREE TO THAT. WE DO DISAGREE ABOUT WHETHER THE STRUCTURE IS SUFFICIENT; AND IF IT IS SUFFICIENT, WHAT IT IS.

U.S. ETHERNET PROPOSES A VERY SIMILAR STRUCTURE FOR HERE TO WHAT THEY PROPOSED IN HOST INTERFACE MEANS. IT HAS THE SAME PROBLEMS WITH THE BUFFER MEMORY AND INTERCONNECTING CIRCUITRY.

THE POINTERS THAT PERFORM THESE FUNCTIONS ARE THE SAME POINTERS THAT -- ARE THE SAME TYPES OF POINTERS, BUT ON THE OTHER SIDE OF THE BUFFER MEMORY IN FIGURES NINE AND 11.

SO THE TRANSMIT DATA LOGIC IS SHOWN ON THE RIGHT SIDE OF FIGURE NINE. AND IT HAS A COLLECTION OF POINTERS THAT PERFORM THE MAPPING THAT MOVES THE DATA BACK AND FORTH.

AND THE TRANSMIT DMA LOGIC ALSO IS ON THE RIGHT SIDE OF THE BUFFER MEMORY AND INCLUDES A COLLECTION OF POINTERS THAT MOVE THE DATA BETWEEN THE BUFFER MEMORY AND THE NETWORK TRANSCEIVER.

SO THE LOGIC THAT PERFORMS THESE FUNCTIONS IS VERY EXPLICITLY TIED TO THE FUNCTIONS. THE QUESTION REALLY FOR YOUR HONOR IS WHETHER THAT LOGIC IS SUFFICIENT.

MOVING ON TO THE THRESHOLD TERMS, THESE ARE SUBSTANTIALLY DIFFERENT, UNLESS IF YOUR HONOR HAS NO QUESTIONS ON THOSE NETWORK INTERFACE --

THE COURT: YOU CAN MOVE ON.

MR. STEPHENS: -- TO THE NEXT MEANS.

OH, YOUR HONOR, I'VE JUST BEEN HANDED SOMETHING. I WANT TO MENTION A COUPLE OF OTHER CASES ON THIS 112-6 POINT CLAIM DIFFERENTIATION.

THESE ARE IN ADDITION TO ONES IN OUR BRIEF. THE NOMOS CORPORATION V. BRAINLAB.

THE COURT: JUST GIVE ME THE CITE.

MR. STEPHENS: YES. 357 F.3D 1364, AT PAGE 1368.

AND THE OTHER IS HOST INTERFACE LOGIC COMPANY. IT'S CITE IS 2004 WL -- IT'S A WEST LAW CITE 2600 134, AT STAR FIVE, FOOTNOTE SEVEN.

OKAY. ALSO, I'VE BEEN HANDED A COPY OF LAITRIAM WITH THE PORTION I WAS TALKING ABOUT. I CAN HAND THIS UP, IF YOUR HONOR WOULD LIKE.

THE COURT: NO, I'LL GET MY OWN.

MR. STEPHENS: OKAY. FAIR ENOUGH.

ALL RIGHT. LET'S MOVE ON TO THE NEXT MEANS TERMS. THIS IS MEANS FOR COMPARING. THIS IS IN '459 PATENT, CLAIM ONE.

THE DISPUTES BEFORE YOUR HONOR DON'T INCLUDE WHETHER IT'S 112-6. WE AGREE THAT IT'S 112-6. THE DISPUTE IS LIMITED TO WHAT IS THE CORRESPONDING STRUCTURE.

WE DO NOT CONTEND THAT THESE THRESHHOLD TERMS ARE INDEFINITE, BECAUSE THE CORRESPONDING DESCRIPTION IN THE SPECIFICATION AT LEAST HAS STRUCTURE. IT HAS THINGS THAT WOULD DESCRIBE POTENTIALLY A CONCRETE IMPLEMENTATION.

THE FIRST DISPUTE IS ABOUT WHETHER OR NOT THE LIMITATION CORRESPONDS TO THE STRUCTURE THAT PROVIDES A SIGNAL TO THE HOST PROCESSOR.

AND, OF COURSE, IT ACTUALLY SAYS THAT IT DOES. IT SAYS THAT -- IT SAYS:

"GENERATING AN INDICATION SIGNAL TO THE HOST PROCESSOR."

AND THE STRUCTURE THAT IS CITED BY U.S. ETHERNET DOESN'T EXTEND TO THE HOST PROCESSOR. THE SPECIFICATION TELLS YOU WHAT DOES.

IT TELLS YOU THAT THERE'S AN INTERRUPT CONTROLLER MODULE 60 THAT PASSES INTERRUPT SIGNALS THROUGH VARIOUS ENABLES AND MASKS AND THEN DRIVES THEM ONTO THE HOST BUS.

SO BY PUTTING THEM ONTO THE HOST BUS, IT THEN PROVIDES THE SIGNAL TO THE HOST PROCESSOR.

SO THIS IS A NECESSARY STRUCTURE TO PERFORM THE FUNCTION OF PROVIDING AN INDICATION SIGNAL TO THE HOST PROCESSOR, AS THE RECITED FUNCTION REQUIRES.

NOW, FOR THE REST OF THE CLAIM YOU HAVE THIS MEANS FOR COMPARING THE COUNTER AND GENERATING AN INDICATION SIGNAL.

SO THE LOWER HALF OF WHAT I CITED THERE, THE EXCERPT FROM THE CLAIM, IS THE LIMITATION THAT IS AT ISSUE.

AND THE COUNTER PORTION OF THE CLAIM IS SHOWN JUST ABOVE IT, BELOW THE FIGURE.

WHAT YOU CAN TELL FROM READING THE CLAIM IS THAT THE

COUNTER COUNT IS STATED AS GOING EITHER TO OR FROM THE BUFFER MEMORY.

AND WE KNOW FROM LOOKING AT FIGURE THREE THE BUFFER GOES TO THE -- EXCUSE ME -- THE DATA GOES TO THE BUFFER MEMORY WHEN YOU'RE TRANSMITTING. AND IT ALSO GOES TO THE BUFFER MEMORY WHEN YOU'RE RECEIVING.

AND IT ALSO GOES FROM THE BUFFER MEMORY ON EACH OF THOSE SIDES, AS WELL. SO WHEN DATA IS BEING RECEIVED IT'S MOVED FROM THE BUFFER MEMORY TO THE HOST SYSTEM. WHEN DATA IS BEING TRANSMITTED IT MOVES FROM THE BUFFER MEMORY TO THE NETWORK TRANSCEIVER.

SO THERE'S FOUR DIFFERENT PLACES WHERE DATA IS MOVED TO OR FROM THE BUFFER MEMORY, OR DIFFERENT TYPES OF TRANSACTIONS IN WHICH THAT HAPPENS.

AND THE SPECIFICATION DISCLOSES FOUR SEPARATE EMBODIMENTS. THIS IS AN EXAMPLE OF WHAT WE WERE TALKING ABOUT EARLIER, YOUR HONOR.

SO THE CLAIM IS BROAD ENOUGH TO COVER ANY OF THOSE TRANSFERS TO OR FROM THE BUFFER MEMORY. AND THERE'S AN EMBODIMENT DISCLOSED FOR EACH. WE DON'T CONTEND THAT IN ORDER TO INFRINGE THAT AN INFRINGING DEVICE WOULD HAVE TO HAVE ALL FOUR, BUT IT WOULD HAVE TO BE EQUIVALENT TO AT LEAST ONE OF THOSE FOUR.

NOW, THERE'S NO ALLEGATIONS OF INFRINGEMENT HERE BASED ON TRANSMISSION. THEY ARE ALL ABOUT RECEIVING. SO I'M

GOING TO FOCUS JUST ON THE TWO RECEIVING EMBODIMENTS.

STARTING WITH THE RECEIVE INDICATION EMBODIMENT, SO WHAT THIS DOES IS IT COUNTS DATA THAT IS BEING MOVED INTO THE BUFFER MEMORY FROM THE NETWORK TRANSCEIVER. AND THEN, BASED ON THAT COUNT IT GENERATES AN INDICATION SIGNAL.

U.S. ETHERNET POINTS TO A COMPARATOR 213 THAT THEY CLAIM PERFORMS THE RECITED FUNCTION OF COMPARING THE COUNTER TO THE THRESHHOLD VALUE. NOW, I'LL TELL YOU RIGHT NOW THE '459 PATENT IS PARTICULARLY DIFFICULT. THESE PATENTS, I THINK, ARE ALL SOMEWHAT DIFFICULT, BUT THE '459 PATENT STRUCTURE IS VERY, VERY CONFUSING. IT'S FULL OF DETAILS THAT ARE NOT EXPLAINED.

MY GUESS AT HOW THE SPECIFICATION WAS GENERATED WAS THERE WAS A LARGER TECHNICAL DOCUMENT AND SOME CHUNKS OF IT WERE PULLED OUT AND STUCK INTO THE SPECIFICATION, BECAUSE THERE ARE THINGS THAT YOU JUST CAN'T TELL FROM IT.

BUT THE STRUCTURE THAT IS DESCRIBED FOR THIS RECEIVE INDICATION EMBODIMENT IS QUITE COMPLICATED AND NOT NEARLY AS SIMPLE AS U.S. ETHERNET MAKES IT SOUND. AND IT DOESN'T DO THE RECITED FUNCTION IN THE WAY THAT U.S. ETHERNET SAYS IT DOES.

THE COMPARATOR 213 DOES NOT COMPARE THE OUTPUT OF A COUNTER WITH A THRESHOLD VALUE.

THE FIRST INPUT TO IT IS A FRAME SIZE. IT'S NOT A THRESHOLD VALUE. SO IT'S THE SIZE OF THE FRAME THAT'S BEING RECEIVED. AND THE OTHER INPUT IS A SUM THAT INCLUDES BOTH AN AMOUNT OF DATA THAT HAS BEEN COUNTING, BUT IT'S SUMMED WITH THE

THRESHOLD VALUE.

SO WHAT YOU HAVE IS A THRESHOLD VALUE THAT IS ADDED TO THE NUMBER OF BYTES THAT HAVE BEEN RECEIVED, AND THEN THAT'S COMPARED AGAINST THE SIZE OF THE FRAME THAT'S BEING RECEIVED. VERY DIFFERENT THAN JUST COMPARING THE COUNTER TO THE THRESHOLD VALUE.

SO LET'S TALK ABOUT THE TRANSFER COMPLETE INDICATION. U.S. ETHERNET AGAIN PULLS OUT A COMPARATOR FROM A MUCH LARGER AND MORE COMPLICATED STRUCTURE AND SAYS:

"AH, THIS IS THE COMPARATOR THAT CORRESPONDS TO THAT EMBODIMENT."

AGAIN, THEY ARE WRONG. IT DOESN'T PERFORM THIS SIMPLE FUNCTION OF COMPARING A THRESHOLD VALUE TO A COUNT. AGAIN, THIS IS QUITE COMPLICATED. BUT INSTEAD THE INPUTS ARE A TRANSFER LINK AND AN UPLOAD BYTE COUNT.

AND ONE PROBLEM WITH THIS IS THE SPECIFICATION JUST NEVER TELLS YOU WHAT THE UPLOAD BYTE COUNT IS AT ALL.

SO INTERPRETING THE STRUCTURE HERE THAT IS TIED TO THE FUNCTION IN THE SPECIFICATION IS ACTUALLY PRETTY DIFFICULT. BUT WE HAVE GIVEN THEM SOME BENEFITS OF THE DOUBT AND COME UP WITH WHAT WE THINK IS ACTUALLY GOING ON HERE.

AND I'M NOT GOING TO BELABOR YOU WITH ALL THE DETAILS OF THE ALGORITHM THAT IS DESCRIBED IN THE SPECIFICATION, BUT I THINK I CAN EXPLAIN TO YOU WHAT IT DOES IN THE END.

AND IT IS MORE COMPLICATED THAN U.S. ETHERNET

SUGGESTS. IT ACTUALLY APPLIES TWO DIFFERENT THRESHOLDS DEPENDING ON THE STATUS OF THE CURRENTLY -- THE FRAME THAT IS CURRENTLY BEING RECEIVED.

AND THE STRUCTURE THAT DOES THAT IS IN THE LOWER LEFT. YOU SEE THE CURRENT FRAME IS CURRENT RECEIVED? THAT'S A SIGNAL THAT TELLS THAT SELECTOR 340 WHETHER OR NOT THE FRAME THAT IS CURRENTLY BEING RECEIVED IS ACTUALLY STILL ON THE WIRE AND COMING IN OR FULLY RECEIVED AND ALREADY IN THE BUFFER.

AND THEN, BASED ON THAT VALUE, THAT STATUS, IT SELECTS ONE OF TWO DIFFERENT THRESHOLDS, THE LENGTH LEFT THRESHOLD OR THE TRANSFER COMPLETE THRESHOLD.

AND HERE'S THE NET EFFECT OF THAT. IF AT THE TIME THAT THE TRANSFER THRESHOLD IS MET THE FRAME IS ALREADY IN THE BUFFER, THEN THE SYSTEM GOES AHEAD AND TRIGGERS AN INTERRUPT.

SO THE TRANSFER THRESHOLD STARTS WHEN THE FRAME IS ALREADY FULLY IN THE BUFFER. SO AS SOON AS THE TRANSFER THRESHOLD IS MET IT TRIGGERS AN INTERRUPT.

THAT'S THE CONSERVATIVE SITUATION. YOU'VE GOT THE FRAME ALREADY IN THE BUFFER. YOU CAN TRIGGER THE INTERRUPT WITHOUT WAITING ANY LONGER BECAUSE YOU KNOW YOU ALREADY HAVE THE DATA.

IT APPLIES A DIFFERENT SITUATION WHEN THE DATA IS NOT ALREADY FULLY IN THE BUFFER, BECAUSE IT'S STILL ON THE WIRE. SOMETHING MIGHT HAPPEN. MAYBE THE FRAME WILL BE LONGER THAN YOU THINK.

THE TRANSFER THRESHOLD IS MET, BUT THE FRAME IS STILL ON THE WIRE. YOU DON'T HAVE IT YET, SO YOU WAIT A LITTLE LONGER, THE MORE CONSERVATIVE THING TO DO. WAIT A LITTLE BIT LONGER BEFORE YOU TRIGGER THE INTERRUPT. MAKES IT'S LESS LIKELY THAT YOU'LL HAVE AN UNDERRUN ERROR.

SO THAT'S THE STRUCTURE THAT CORRESPONDS TO THIS PARTICULAR EMBODIMENT. AND IT'S MORE COMPLICATED, AS I SAID, THAN U.S. ETHERNET SUGGESTS. AND THAT'S --

THE COURT: BUT WOULDN'T -- DO I HAVE TO CONCERN MYSELF WITH, AGAIN, ALL OF THE THINGS, INFORMATION THAT IT NEEDS TO DO IT? BUT IF THE FUNCTION IS, AS YOU SAY, TO GENERATE, TO COMPARE VALUE AND GENERATE A SIGNAL.

MR. STEPHENS: YES.

THE COURT: AND SO IF I HAVE A DEVICE THAT DOES THAT, IT MAY -- THAT'S SUFFICIENT.

MR. STEPHENS: THAT'S CORRECT. SO YOU HAVE TO LOOK FOR A PLACE IN THE SPECIFICATION WHERE THAT'S DISCLOSED. AND THEN YOU HAVE TO ADOPT THAT STRUCTURE, NOT SOME DIFFERENT STRUCTURE THAT YOU EDIT TO ACCOMPLISH A SIMILAR RESULT, BUT THE ACTUAL STRUCTURE THAT IS DISCLOSED IN THE SPECIFICATION.

THE COURT: SO IS THE COUNTER PART OF THE MEANS FOR COMPARING?

MR. STEPHENS: NO, IT'S SEPARATE.

THE COURT: SO THE COUNTER IS SEPARATE. AND SO ALL I NEED -- WHY COULDN'T I USE JUST THE COMPARATOR AND THE CONTROL

BLOCK? THE CONTROL BLOCK IS WHAT GENERATES MY SIGNAL.

MR. STEPHENS: THE REASON THAT YOU CAN'T IS THAT THOSE BY THEMSELVES AREN'T THE STRUCTURES THAT ARE DISCLOSED IN THE SPECIFICATION FOR DOING IT, BECAUSE THEY DON'T RECEIVE THE OUTPUT OF A COUNTER, RIGHT?

THE COURT: WELL --

MR. STEPHENS: SO THERE'S NO PLACE IN THE SPECIFICATION --

THE COURT: BUT THE COMPARATOR CAN DO IT WITHOUT ITSELF RECEIVING IT. THE COMPARATOR IS SOMETHING THAT JUST COMPARES TWO THINGS.

MR. STEPHENS: IT COULD IF THAT WERE DISCLOSED. BUT INSTEAD, WHAT THE SPECIFICATION ACTUALLY DISCLOSED IS THIS MORE COMPLICATED STRUCTURE THAT COMPARES THINGS THAT ARE ALREADY PROCESSED IN A MORE COMPLICATED WAY.

SO IT IS FAIR, YOUR HONOR, TO SAY, YES, I'M GOING LOOK AT THE COMPARATOR, BUT I GOT TO LOOK AT WHAT IT ACTUALLY COMPARES, RIGHT?

I CAN'T TAKE, AGAIN, A STRUCTURE THAT'S SOMETHING DIFFERENT THAN WHAT IS DISCLOSED IN THE SPECIFICATION.

THE COURT: SO I'VE GOT THIS THRESHOLD VALUE, AND THAT THING IS MOVING, RIGHT? THE THRESHOLD VALUE IS PRESET OR NOT?

MR. STEPHENS: IT, I BELIEVE, IS PRESET, BUT THERE'S MORE THAN ONE, RIGHT? SO IT CHANGES DEPENDING ON THE STATUS OF

THE FRAME.

THE COURT: BUT YOU AGREE THAT AT LEAST THE COMPARATOR AND THE CONTROL BLOCK ARE PART OF THE MEANS FOR THE STRUCTURE PERFORMING THIS.

MR. STEPHENS: I AGREE THAT AT LEAST THAT MUCH IS REQUIRED, BUT THAT'S NOT ENOUGH, BECAUSE THAT BY ITSELF IS INSUFFICIENT. I MEAN, PARTICULARLY THE CONTROL -- I FORGOT EXACTLY HOW IT'S PHRASED. BUT THE CONTROL BOX CERTAINLY DOESN'T TELL YOU HOW IT WORKS.

THE COURT: OKAY.

MR. STEPHENS: LET'S MOVE ON TO THE NEXT PHRASE. IT IS THE MEANS FOR MONITORING. AND MARVELL COUNSEL, RAY ZADO, IS GOING TO ARGUE THIS.

THE COURT: A NEW VOICE.

MR. ZADO: GOOD MORNING, YOUR HONOR.

AND AS MR. STEPHENS HAS INDICATED, I'M GOING TO BE DISCUSSING THE MEANS FOR MONITORING, OUT OF THE '872 PATENT, CLAIM ONE. AND, SPECIFICALLY, IT'S THE ONE THING I CAN POINT OUT IN CONNECTION WITH THIS PARTICULAR LANGUAGE WAS THAT THE FUNCTION HAD PREVIOUSLY BEEN IN DISPUTE. IN PARTICULAR, THE LANGUAGE WITH RESPECT:

> "TO MAKE A THRESHOLD DETERMINATION OF AN AMOUNT OF DATA OF THE FRAME TRANSFERRED TO THE BUFFER MEMORY."

HOWEVER, YOU RESOLVED THAT DISPUTE IN THE FIRST CLAIM

CONSTRUCTION ORDER AND FOUND THAT EXPLICITLY TO BE PART OF THE FUNCTION CORRESPONDING TO THE DISCLOSED MEANS.

SO TO BRIEFLY SUMMARIZE THE DISPUTES BETWEEN THE PARTIES, THERE'S NO DISPUTE THAT THE LIMITATIONS IS SUBJECT TO 112, PARAGRAPH SIX. BUT THE DISPUTE CAN BE FRAMED RELATIVELY NARROWLY BECAUSE IT'S THE QUESTION THAT:

> "THE DEFENDANTS CONTEND THAT THE STRUCTURE MUST ACCOUNT FOR BOTH THE IMMEDIATE DATA AND DOWNLOADED DATA AS DESCRIBED IN THE SPECIFICATION."

THAT'S DATA THAT IS STORED IN THE TRANSMIT DESCRIPTOR. AND I'LL EXPLAIN THAT IN A MINUTE IN THE NEXT COUPLE OF SLIDES.

WHEREAS, USEI CONTENDS THE STRUCTURE, THE CORRESPONDING STRUCTURES ONLY NEED TO ACCOUNT FOR DOWNLOADED DATA.

AND TO EXPAND UPON USEI'S POSITION A LITTLE BIT, USEI INCORRECTLY ASSERTS THAT THERE ARE TWO EMBODIMENTS DISCLOSED IN THE SPECIFICATION, WHICH THEY REFER TO AS A "DOWNLOAD DATA EMBODIMENT" AND "IMMEDIATE DATA EMBODIMENT."

HOWEVER, THE SPECIFICATION DISCLOSES -- AND WE'VE HEARD IT SEVERAL TIMES -- IT'S A SINGLE EMBODIMENT THAT MUST BE ABLE TO COMPARE BOTH IMMEDIATE DATA AND DOWNLOADED DATA.

FOR EXAMPLE, THE CITATION WE HAVE HERE AT COLUMN THREE, REFERS THAT THE CORRESPONDING STRUCTURE IDENTIFIED IN FIGURES 11 THROUGH 18:

"PROVIDE ONE IMPLEMENTATION OF LOGIC FOR IMPLEMENTING THE EARLY TRANSMISSION FEATURE OF THE PRESENT INVENTION."

AND ANOTHER CITATION THAT'S ALSO RELEVANT TO THIS POINT WOULD BE COLUMN 23 AT LINES 21 TO 27.

NOW, THE WESTERN DISTRICT OF WISCONSIN RECENTLY CONSIDERED AND REJECTED THIS VERY ARGUMENT MADE BY USEI. AND IT'S THE APPLE V. MOTOROLA CASE.

SO TO BRIEFLY DISCUSS, IN THAT CASE THE CLAIM TERM AT ISSUE WAS A STORING -- WAS "STORING MEANS."

AND THE QUESTION WAS WHETHER THE CORRESPONDING STRUCTURE FOR THE STORING MEANS INCLUDED BOTH A BROADCAST CONSUMER DATABASE AND A SEQUENTIAL CONSUMER DATABASE.

AND THE PLAINTIFF THERE ASSERTED THAT THE SEQUENTIAL CONSUMER DATABASE WAS OPTIONAL, WAS NOT REQUIRED AS PART OF THE CORRESPONDING STRUCTURE, IN PART BECAUSE OF STATEMENTS IN THE SPECIFICATION THAT THERE MAY BE BROADCAST CONSUMERS, THERE MAY BE SEQUENTIAL CONSUMERS, OR THERE MAY BE BOTH, IN THE ALTERNATIVE LANGUAGE IN THE SPECIFICATION.

THE COURT REJECTED THAT ARGUMENT, AND SPECIFICALLY HELD THAT THERE WAS A SINGLE EMBODIMENT THAT WAS DISCLOSED THAT WAS CAPABLE OF HANDLING BOTH THE BROADCAST CONSUMER DATABASE AND SEQUENTIAL CONSUMER DATABASE.

THE COURT: YOU HEARD MY EARLIER STATEMENT ABOUT DEPENDENT CLAIMS, BECAUSE YOU HAVE THE SAME THING HERE, RIGHT?

YOU HAVE WITH RESPECT TO THIS IMMEDIATE DATA AREA VERSUS A DIFFERENT KIND OF DATA. YOU HAVE A DEPENDENT STRUCTURE THAT HANDLES THE IMMEDIATE DATA.

MR. ZADO: I WOULD RESPOND TO THAT IN TWO WAYS, YOUR HONOR. FIRST IS I BELIEVE YOU'RE REFERRING TO DEPENDENT CLAIM TWO?

THE COURT: YES.

MR. ZADO: DEPENDENT CLAIM TWO IS NOT STRICTLY DISCUSSING THE IMMEDIATE DATA. WHILE IT'S REFERENCED IN CLAIM TWO, IT'S ACTUALLY NARROWER. AND THE DEPENDENT CLAIM TWO REALLY REQUIRES USE OF A RING BUFFER FOR STORING DESCRIPTORS.

SO I THINK THE SCOPE IS NOT SUCH THAT IT WOULD INCLUDE CONCEPT OF THE IMMEDIATE DATA BEING THE CORRESPONDING STRUCTURE.

THE COURT: SO THE LANGUAGE IS:

"WHEREIN THE MEANS FOR MONITORING," WHICH IS THE TERM WE'RE LOOKING AT, "INCLUDES THE IMMEDIATE DATA IN THE THRESHOLD DETERMINATION," RIGHT?

SO THAT COULD -- IN OTHER WORDS, YOU'RE EDUCATING ME I SHOULD LOOK CLOSELY AT WHAT THAT IS REFERRING TO?

MR. ZADO: NO. I WAS REFERRING YOU TO THE FULL BODY OF DEPENDENT CLAIM TWO.

THE COURT: ALL RIGHT. SO I'LL LOOK AT THAT.

GO AHEAD, MR. ZADO.

MR. ZADO: OKAY. AND, OF COURSE, I WOULD ALSO

REFERENCE THE CASES THAT WERE CITED MY MR. STEPHENS IN HIS EARLIER DISCUSSION. AND, IN PARTICULAR, THE CONCEPT WHEN THERE'S ONLY ONE EMBODIMENT IN THE INVENTION THAT IS DESCRIBED IN PATENT, THE CORRESPONDING STRUCTURE IS LIMITED TO THAT EMBODIMENT.

AND ANOTHER CASE FOR THAT WOULD BE THE SOQUE HOLDINGS V. KEYSCAN. THE CITE WAS 2010 WL 2292316, AT STAR NINE.

THE COURT: ALL RIGHT.

MR. ZADO: SO I WILL TRY AND SPEED THIS UP QUICKLY. SO THE TRANSMIT DESCRIPTOR INCLUDE OR IDENTIFIES FRAME DATA IN TWO MECHANISMS OR TWO WAYS.

FIRST, IT INCLUDES IMMEDIATE DATA, WHICH IS ACTUALLY DATA, FOR EXAMPLE, FROM THE HEADER OF THE FRAME, AND THE BUFFER DESCRIPTORS, WHICH ARE ACTUALLY POINTERS TO DATA THAT NEEDS TO BE DOWNLOADED, TO THE DMA FROM THE HOST MEMORY TO THE TRANSMIT DATA BUFFER.

AND THE SPECIFICATION SPECIFICALLY TEACHES THAT YOU REFER TO THE PATENT. YOU COMPARE THE COMBINATION OF THIS DATA AND DETERMINE WHETHER THAT MEETS THE THRESHOLD TO DETERMINE WHEN THE ACTUAL TRANSMISSION OF THE FRAME'S TO BE INITIATED.

SO LOOKING AT THE ACTUAL DISCLOSED EMBODIMENT IN CONNECTION WITH FIGURE 11, THIS COUNTER 300, IT ACTUALLY COUNTS THE DATA.

THIS COUNTER 300 ACTUALLY COUNTS THE DATA THAT IS BEING TRANSMITTED VIA DMA. AND THAT DATA IS ACTUALLY ADDED TO

THE IMMEDIATE LENGTH VALUE, WHICH IS A VALUE FOR THE AMOUNT OF DATA IN THE -- THE VALUE THAT CORRESPONDS TO THE AMOUNT OF DATA IN THE IMMEDIATE AREA OF THE TRANSMIT DESCRIPTOR.

NOW, FIGURE 12 ACTUALLY SHOWS THE KEY STRUCTURES FOR PERFORMING THAT THRESHOLD DETERMINATION. AND SO THE START THRESH REGISTER STORES THE START THRESH VALUE, WHICH IS THE VALUE THAT YOU NEED TO EXCEED IN ORDER TO INITIATE THE TRANSMISSION.

NOW, THE KEY STRUCTURE HERE IS THIS DATA AVAILABLE CONTROL, WHICH ACTUALLY OUTPUTS THE TRANSMIT DATA AVAILABLE SIGNAL THAT INDICATES ENOUGH DATA IS IN THE ADAPTER THAT THE TRANSMISSION SHOULD BEGIN.

THAT HAS TWO INPUTS. FIRST, THIS DOWNLOAD COMPARE, WHICH RECEIVES THE OUTPUT OF THE DOWNLOAD BYTES RESIDENT IN FIGURE 11, AS WELL AS THE IMMEDIATE COMPARE, WHICH ALSO CALCULATES THE AMOUNT OF IMMEDIATE DATA THAT HAS BEEN DOWNLOADED FROM THE TRANSMIT DESCRIPTOR. AND WHEN EITHER OF THOSE EXCEED THE THRESHOLD, THEN THE TRANSMIT DATA AVAILABLE SIGNAL IS TRIGGERED.

SO JUST TO SUMMARIZE, THE SLIDES INDICATE WHAT THE CORRESPONDING STRUCTURES ARE, BUT, REALLY, THE KEY POINT IS THAT THE PATENTS TEACH A SINGLE EMBODIMENT FOR PERFORMING THESE CORRESPONDING FUNCTIONS OR FOR PERFORMING THE FUNCTION CORRESPONDING TO THE STRUCTURE FOR THE MEANS FOR COMPARING.

FOR EXAMPLE, IN THE '459 PATENT THE PATENTEE

SPECIFICALLY KNEW HOW TO CLAIM AND DESCRIBED IT IN MULTIPLE EMBODIMENTS. AND THEY WOULD REFER TO THOSE AS MULTIPLE EMBODIMENTS. BUT IN THE '874 PATENT, THE PATENTEE SPECIFICALLY REFERS TO IT AS A SINGLE IMPLEMENTATION THAT IS ADAPTED THROUGH ALL OF FIGURES 11 THROUGH 18.

AND I BELIEVE MY TIME IS UP.

THE COURT: AND YOU'RE MAKING THE SAME ARGUMENT ON '872, CLAIM 28?

MR. ZADO: YES, THAT'S CORRECT.

THE COURT: ALL RIGHT. NOW, LET'S TALK ABOUT TIME, BECAUSE NOW WE'RE AT TEN OF NOON, AND WE'VE ONLY HEARD FROM ONE OF YOU ON THIS IMPORTANT AREA, SO OBVIOUSLY WE ARE GOING TO HAVE TO COME BACK.

BUT WHY DON'T WE USE PROFITABLY THE TIME BETWEEN NOW AND NOON, AND THEN WE'LL FIND A LOGICAL PLACE TO BREAK AND TALK ABOUT WHETHER WE -- HOW WE HANDLE THE REST.

MR. WALSH: THANK YOU, YOUR HONOR. GOOD MORNING. I'M RYAN WALSH, ONCE AGAIN, FOR U.S. ETHERNET.

AND COULD I ASK HOW MUCH TIME EACH SIDE HAS LEFT AT THIS POINT?

THE CLERK: YOU'VE USED 37 MINUTES OF YOUR TIME.

MR. WALSH: OKAY. THANK YOU.

OKAY. THERE WE ARE.

YOUR HONOR, YOU PUT YOUR FINGER ON AN ISSUE THAT RUNS -- A THEME THAT RUNS THROUGHOUT THE MEANS-PLUS-FUNCTION

ANALYSIS. FRANKLY, A LOT OF THE CLAIM CONSTRUCTION ANALYSIS, BUT CERTAINLY THE MEANS-PLUS-FUNCTION 112-6 ANALYSIS.

THERE ARE REALLY THREE THEMES THAT YOU SEE WITH THEIR CLAIM CONSTRUCTION ANALYSIS IN THIS SECTION. FIRST, THEY WHOLLY IGNORE THE RECITED FUNCTION. REGARDLESS OF THE AFTER THE FOR, THEY ARE CITING TO WHATEVER THE MEANS LANGUAGE IS AND TRYING TO CRAM EVERY SINGLE ELEMENT THEY CAN INTO THAT, REGARDLESS OF THE FUNCTION.

AND, FRANKLY, THEY GENERALLY IGNORE THE CLAIM LANGUAGE ITSELF EVEN IN THE DEPENDENT CLAIMS IN COMING TO THEIR CONSTRUCTIONS.

THE SECOND KEY FLAW IS THAT THEY IDENTIFY FAR MORE THAN THE MINIMUM STRUCTURE NECESSARY TO PERFORM THE RECITED FUNCTION.

AND THIRD, THEY VIOLATE THE FUNDAMENTAL PRINCIPLE OF CLAIM DIFFERENTIATION. AND I THINK THAT'S THE POINT YOU RAISED, YOUR HONOR. AND I WANTED TO TOUCH ON IT, AND MAYBE WE CAN DO THIS JUST BEFORE THE BREAK.

BUT ONE OF THE POINTS THAT COUNSEL MADE WITH RESPECT TO THE HOST INTERFACE MEANS WAS THAT -- AND IF YOU'LL TURN TO 84, I BELIEVE IT IS.

IT WAS A FIGURE LIKE THIS, AND HE POINTED OUT:

"WELL, YOUR HONOR, IF YOU TAKE OUT THE REFERENCES IN THE DEPENDENT CLAIMS FROM THAT TOP BOX YOU'RE LEFT WITH AN EMPTY BOX."

WELL, THAT'S PURELY FALSE, YOUR HONOR. WHAT CLAIM THREE CLAIMS IS A "TRANSMIT DESCRIPTOR LOGIC," WHICH IS TRUE, BUT IT ALSO CLAIMS:

"DOWNLOAD LOGIC RESPONSIVE TO TRANSMIT DESCRIPTORS IN THE BUFFER MEMORY."

THAT'S A PARTICULAR TYPE OF DOWNLOAD LOGIC, THE DOWNLOAD LOGIC THAT IS COVERED BY CLAIM ONE.

SO YOU'RE EXACTLY RIGHT, YOUR HONOR, AS FAR AS LOOKING TO DEPENDENT CLAIMS FOR GUIDANCE AS FAR AS THE INDEPENDENT CLAIMS ARE CONCERNED.

AND IN THAT REGARD, WE CITED YOUR HONOR TO THE WENGER CASE IN OUR BRIEFING. AND THAT'S AT 239 F.3D 1225. AND IT STANDS FOR THAT PROPOSITION THAT IF YOU HAVE A DEPENDENT CLAIM IN MEANS-PLUS-FUNCTION FORMAT THAT STRUCTURE IS PRESUMABLY NOT PART OF THE STRUCTURE OF THE INDEPENDENT CLAIM.

AND THERE ARE OTHER CASES INCLUDING THE ENZO BIOCHEM CASE, AND I BELIEVE THE NORTHROP GRUMAN CASE THAT WE CITED THAT ALSO DISCUSS THAT PROPOSITION.

THE LAITRIAM CASE, YOUR HONOR, THAT THEY HAVE REFERENCED REPEATEDLY IS ACTUALLY DISTINGUISHED IN THE WENGER CASE. AND IN THE WENGER CASE YOU HAD A DISCLOSURE THAT DISCUSSED A MEANS FOR PROVIDING -- I THINK THEY CALLED IT A SLURRY, BUT TO FOOD, LIKE CANDY OR SOMETHING, SPRAYING SUGAR OR SALT OR SOMETHING ON FOOD.

AND THE ISSUE WAS: HOW DO YOU KEEP THE MOISTURE FROM

GETTING INSIDE THAT?

AND SO IT TALKED ABOUT A CIRCULATING FAN WAS WHAT WAS IN THE DISCLOSURE. BUT THE DISCLOSURE ALSO TALKED ABOUT A RECIRCULATING FAN. BUT THE INDEPENDENT CLAIM DIDN'T MENTION A RECIRCULATING FAN.

AND THE COURT HELD -- THE FEDERAL CIRCUIT, NOT THE DISTRICT OF DELAWARE, BUT THE FEDERAL CIRCUIT CLAIMED THAT:

> "SURELY THE DISCLOSURE MENTIONS THIS RECIRCULATING FUNCTION, BUT THAT'S NOT PART OF THE FUNCTION IN THE INDEPENDENT CLAIM. AND SO WE'RE ONLY GOING TO DEAL WITH CIRCULATING. AND SO WE'RE GOING TO FIND STRUCTURE THAT PERFORMS CIRCULATING, NOT RECIRCULATING THE AIR."

SO WITH THAT, YOUR HONOR -- WOULD YOU GO TO 53?

THE MEANS FOR COMPARING THAT WE WERE JUST DISCUSSING, THE FUNCTION HERE WHICH IS LISTED AT THE TOP:

> "COMPARING THE COUNTER TO THE THRESHOLD VALUE IN THE ALTERABLE STORAGE LOCATION AND GENERATING AN INDICATION SIGNAL TO THE HOST PROCESSOR RESPONSIVE TO THE COMPARISON OF THE COUNTER AND THE ALTERABLE STORAGE LOCATION."

YOUR HONOR, WE'RE AGAIN IDENTIFIED THE COMPARATOR THAT DOES THE COMPARING AND THE CONTROL BLOCK THAT DOES THE GENERATING. THOSE ARE THE ONLY STRUCTURES NECESSARY.

AS YOU CAN SEE, THE DEFENDANT'S STRUCTURE IS BLANKED

THERE. THEY SAID THERE ARE TWO ELEMENTS THAT ARE COMMON TO ALL, BUT THEN THEY DISCUSS VARIOUS EMBODIMENTS AND ADDITIONAL STRUCTURE THAT HAS NOTHING TO DO WITH MEANS FOR COMPARING OR GENERATING.

OKAY. THAT WAS ALL, I BELIEVE.

AGAIN, THE PARTIES AGREE ON 112-6. THEY AGREE ON THE FUNCTION. BUT THE DISPUTE HERE IS ABOUT THEIR ATTEMPT TO IMPORT EXCESSIVE AND EXTRANEOUS STRUCTURE.

AGAIN, THERE'S THE WENGER CASE THAT WE CITED AND NORTHROP GRUMAN CASE THAT IS CITED IN OUR BRIEFING.

THE '459 PATENT -- AND I KNOW WE DISCUSSED IT AT LENGTH, AND I KNOW YOU'RE FAMILIAR WITH IT, BUT AT THIS POINT THE THRESHOLD LOGIC IS REALLY WHAT IS AT ISSUE IN THIS CLAIM TERM. AND THRESHOLD LOGIC SPELLS OUT THREE DISCRETE SUBELEMENTS: "A COUNTER, AN ALTERABLE STORAGE LOCATION," AND THEN THE CLAIM TERM THAT IS AT ISSUE HERE:

"MEANS FOR COMPARING AND GENERATING."

AND IT'S THE THIRD. IT'S THAT MEANS. THAT'S THE ONLY THING, THAT'S THE ONLY CLAIM TERM THAT IS AT ISSUE HERE. NOT THE COUNTER AND NOT THE ALTERABLE STORAGE LOCATION.

AND THIS, AGAIN, JUST HIGHLIGHTS AN EMBODIMENT THAT IDENTIFIES SOME OF THE STRUCTURE. AND I NOTE DEFENSE COUNSEL HAS TAKEN ISSUE WITH SOME OF THE STRUCTURES WE'VE IDENTIFIED. I WAS HAPPY TO LEARN, I GUESS, THAT THEY DON'T BELIEVE A "COUNTER" IS NECESSARY STRUCTURE ANYMORE. THEY PREVIOUSLY HAD IDENTIFIED

THE COUNTER.

BUT THE COUNTER, WE BELIEVE, IS WHAT IS INDICATED IN RED. THE ALTERABLE STORAGE LOCATION IS WHAT IS IN GREEN. AGAIN, THOSE ARE SEPARATE SUBELEMENTS OF THE CLAIM TERMS.

WHAT THE QUESTION HERE IS: WHAT IS COMPARING THOSE VALUES, AND THEN WHAT IS GENERATING AN INDICATION SIGNAL? THE STRUCTURES IN BLUE ARE WHAT ARE ACCOMPLISHING THOSE FUNCTIONS.

SO, AGAIN, THOSE ARE THE ONLY TWO FUNCTIONS FOR THE COMPARING AND GENERATING, THE COMPARATOR AND THE CONTROL BLOCK.

THE NORTHROP GRUMAN CASE, YOUR HONOR AGAIN, JUST TO EMPHASIZE IT, THAT THE FEATURES THAT DO NOT PERFORM THE RECITED FUNCTION DO NOT CONSTITUTE CORRESPONDING STRUCTURE, WHICH I BELIEVE YOU TOUCHED ON EARLIER.

THERE'S NO QUESTION, WE DON'T DENY THAT THE PATENT DISCUSSES, THE SPECIFICATION DESCRIBES SEVERAL DIFFERENT EMBODIMENTS OF WAYS THAT YOU CAN DO THIS. AND SO THERE ARE DIFFERENT -- THERE ARE DIFFERENT TYPES OF COUNTERS AND THE THERE ARE DIFFERENT TYPES OF THRESHOLDS. THERE'S RECEIVE THRESHOLD LOGIC. THERE'S TRANSMIT THRESHOLD LOGIC. THERE'S LOOK AHEAD THRESHOLD. LENGTH LEFT THRESHOLD THAT DETERMINES HOW YOU'RE ACTUALLY MEASURING THE FRAMES THAT'S COMING IN OR GOING OUT.

BUT, REGARDLESS, THE STRUCTURE THAT PERFORMS THE RECITED FUNCTION OF COMPARING THE COUNTER AND THRESHOLD IS A COMPARATOR. AND THE STRUCTURE THAT PERFORMS THE RECITED FUNCTION OF GENERATING THE INDICATION SIGNAL IS A CONTROL BLOCK.

THE DEFENDANT'S POSITION IS UNTENABLE. AGAIN, IT MATCHES UP STRUCTURES THAT ARE PART OF OTHER CLAIM ELEMENTS THAT SIMPLY CAN'T BE PART OF THE MEANS FOR COMPARING AND GENERATING.

AGAIN, THEY IMPORT EXCESSIVE STRUCTURE INTO THESE FUNCTIONS.

THE NORTHROP GRUMAN CASE, JUST BASICALLY IT WAS A VERY ANALOGOUS SITUATION WHERE YOU HAD SIGNALS THAT ARE MONITORED BY THE MEANS -- I'M SORRY. IT HAD A MEANS FOR MONITORING SIGNALS.

AND THE COURT HELD THAT THE SIGNALS THAT ARE MONITORED BY THE MEANS FOR MONITORING CANNOT BE A PART OF THE STRUCTURE THAT DOES THE MONITORING.

THE LAST ELEMENT HERE, YOUR HONOR, IS THAT THEY ALSO INCLUDE AN INTERRUPT CONTROLLER, BUT THE SPECIFICATION MAKES IT CLEAR THAT THE THRESHOLD LOGIC CAN GENERATE INDICATION SIGNALS THAT GO TO THE HOST PROCESSOR. AND IT DOESN'T NECESSARILY INCLUDE ANY LIMITATIONS OTHER THAN THAT IN THE CLAIMS, CERTAINLY. BUT THE SPECIFICATION, THESE ARE JUST TWO EXAMPLES WHERE THE LENGTH LEFT THRESHOLD LOGIC WILL GENERATE AN EARLY INDICATION SIGNAL TO THE HOST, SO THAT THAT IS NOT AN ISSUE WITH THIS CLAIM TERM.

BEFORE GETTING TO MEANS FOR MONITORING, IS THIS A GOOD TIME FOR A BREAK, OR WOULD YOU LIKE ME TO KEEP GOING?

THE COURT: I'M HAPPY TO. MAYBE I COULD ASK HOW MUCH TIME THE TWO SIDES HAVE LEFT OR REQUIRE TO FINISH THIS UP? AND

THAT WILL HELP ME TO SEE WHAT THE AFTERNOON IS GOING TO BE LIKE.

THE CLERK: YOU'VE USED 47 MINUTES.

YOU'VE USED 92 MINUTES.

THE COURT: SO YOU WILL BE QUIET, WON'T YOU?

BUT I GUESS I WOULD BENEFIT IN HEARING A LITTLE BIT OF A RESPONSE WITH RESPECT TO THE LOGIC PART OF THIS.

SO THAT MEANS THAT WE'VE GOT ABOUT AN HOUR LEFT. SO IF WE COME BACK AT 1:00 O'CLOCK WE OUGHT TO BE FINISHED AT ABOUT 2:00 O'CLOCK. I HAD INTENDED THIS ALL TO BE DONE HERE IN THE MORNING, SO LET ME KNOW IF THAT'S INCONVENIENT FOR YOU TO COME BACK.

MR. WALSH: THAT WORKS FOR US, YOUR HONOR.

THE COURT: ALL RIGHT. SO LET'S COME BACK AT 1:00 O'CLOCK.

MR. WALSH: THANK YOU VERY MUCH.

(THEREUPON, A RECESS WAS TAKEN.)

THE COURT: VERY WELL. YOU MAY RESUME.

MR. WALSH: THANK YOU, YOUR HONOR. EXCUSE ME.

ALL RIGHT. YOUR HONOR, BEFORE WE BROKE WE WERE TALKING ABOUT THE MEANS-PLUS-FUNCTION TERMS, AND I THINK THE NEXT ONE THAT WE HAD HERE WAS MEANS FOR MONITORING.

I'D LIKE TO GO THROUGH THIS, AND THEN HIT ON SOME HIGH POINTS FOR THE HOST INTERFACE AND NETWORK INTERFACE MEANS CLAIMS BEFORE WE GET TO THE LOGIC TERMS.

BUT WITH RESPECT TO THE MEANS FOR MONITORING IN THE

'872 PATENT, CLAIM ONE, THIS WAS THE IMMEDIATE DATA AND DOWNLOAD DATA ISSUE, IF YOU RECALL, FROM THIS MORNING.

THE FUNCTION IS:

"MONITORING THE TRANSFERRING OF DATA OF A FRAME TO THE BUFFER MEMORY TO MAKE A THRESHOLD DETERMINATION OF AN AMOUNT OF DATA OF THE FRAME TRANSFERRED TO THE BUFFER MEMORY."

WE'VE IDENTIFIED THE FOUR STRUCTURES TO THE LEFT IN THEIR EMBODIMENTS: COUNTER, THRESHOLD STORE, COMPARATOR, INTERCONNECTING CIRCUITRY.

THE DEFENDANTS, IN CONTRAST, HAVE IDENTIFIED EVERYTHING IN THE RIGHT-HAND COLUMN, I THINK. I THINK THAT'S IT. OKAY. SO, THAT'S THE DISTINCTION.

THE COURT: LET ME ASK.

MR. WALSH: YES.

THE COURT: WHEN YOU USE "INTERCONNECTING CIRCUITRY," THAT'S ESSENTIAL.

MR. WALSH: WELL, IT LINKS THE STRUCTURES, YOUR HONOR. IN FACT, IN JUST A SECOND WE'LL GET TO A FIGURE. I THINK MAYBE I'LL POINT OUT TO YOU WHAT WE MEAN BY INTERCONNECTING CIRCUITRY.

THE COURT: BUT THE REASON I ASK IS THAT WHAT YOUR POSITION IS THAT THE THINGS LISTED BY YOUR OPPONENT ARE BEYOND INTERCONNECTING CIRCUITRY. BUT THAT IF THEY ARE PART OF THE INTERCONNECTING CIRCUITRY THEN THEY WOULD BE PART OF THE

STRUCTURE.

MR. WALSH: I THINK, AGAIN, OUR POINT IS SIMPLY THE GENERAL LEGAL PROPOSITION THAT THE FEDERAL CIRCUIT HAS HELD THAT ONLY THE MINIMUM STRUCTURE NECESSARY TO PERFORM THE RECITED FUNCTION IS REQUIRED STRUCTURE. AND WE DO NOT DISPUTE THAT THERE HAS TO BE SOMETHING CONNECTING THESE ELEMENTS. AND SO THE ELEMENTS HAVE TO FEED INTO EACH OTHER IN SOME INSTANCES. THAT THERE HAS TO BE --

THE COURT: RIGHT. BUT IF YOU FED THROUGH SOMETHING ELSE AND YOU'RE CLAIMING INTERCONNECTING CIRCUITRY AS PART OF THE ESSENTIAL STRUCTURE, THEN THE "SOMETHING ELSE" WOULD BE INCLUDED?

MR. WALSH: NO, IT WOULD NOT, BECAUSE IT'S NOT NECESSARY. IT'S NOT -- LET ME SHOW YOU THIS FIGURE HERE. THESE ARE SIMILAR.

THIS IS THE CLAIM TERM, AGAIN, THE MEANS FOR MONITORING.

AGAIN, IT DEALS WITH A COUPLE OF EMBODIMENTS: DATA, IMMEDIATE DATA. WE BELIEVE THAT ONE OF THE EMBODIMENTS IN THIS CLAIM DEALS WITH JUST THE MONITORING OF DOWNLOAD DATA. THERE ARE OTHER EMBODIMENTS THAT ARE IN THE DEPENDENT CLAIMS THAT TALK ALSO ABOUT INCLUDING IMMEDIATE DATA IN THE MONITORING.

THE COURT: SO HERE'S THE CHALLENGE THAT IT PRESENTS FOR THE COURT, BECAUSE ONE OF THE THINGS I THOUGHT WOULD BE HELPFUL TO DO AND THAT YOU'RE STARTING TO DO IS TO SORT OF TRACE

WHAT IS THE STRUCTURE THAT PERFORMS THE FUNCTION. AND WHEN YOU HAVE AN EMBODIMENT THAT IS A CIRCUITRY DIAGRAM OR SOME KIND OF A FUNCTIONAL DIAGRAM THAT SHOWS IT AND THINGS ARE ALL ON THAT ONE DIAGRAM, IT'S VERY CHALLENGING TO SAY:

"OKAY, I'M GOING TO SKIP SOMETHING THAT'S ON THE DIAGRAM THAT IS PLAINLY THERE AND THROUGH WHICH THE CIRCUITRY RUNS."

NOW, IN THE CLAIM YOU CAN SAY:

"I DON'T NEED THAT OR I'M NOT CLAIMING THAT AT THIS POINT," AND IN THE DEPENDENT CLAIMS YOU CAN ADD IT.

BUT THEN, UNDER 112-6 I'VE GOT TO GO TO THE SPECIFICATION. I'VE GOT TO GO TO THE WRITTEN DESCRIPTION. I HAVE TO FIND WHAT IS THE CORRESPONDING STRUCTURE. AND IF WHAT I'M FINDING IS A DESCRIPTION OF A DRAWING OR A DRAWING, IT'S VERY CHALLENGING TO FIGURE OUT HOW TO DO THE DRAWING IN A WAY TO IGNORE SOMETHING THROUGH WHICH THE SIGNAL LOOKS LIKE IT PASSES IN THE DRAWING.

MR. WALSH: WELL, AND I THINK, YOUR HONOR, THAT'S WHAT THE FEDERAL CIRCUIT IN THE WENGER CASE WENT INTO. I MEAN, AGAIN, IT TALKED ABOUT HOW THE EMBODIMENT IN THAT CASE INCLUDED BOTH A CIRCULATING FAN AND A RE -- OR, SORRY, A CIRCULATING FUNCTION AND A RECIRCULATING FUNCTION. AND WHAT THE COURT SAID WAS, WELL, IN THE INDEPENDENT CLAIM IT DIDN'T DISTINGUISH THE TWO.

THE COURT: BUT DID THEIR DRAWING SHOW BOTH FANS?

MR. WALSH: THEY MAY HAVE HAD DIFFERENT DRAWINGS, YOUR HONOR. I'M NOT SURE.

THE COURT: THAT ONE I CAN HANDLE.

MR. WALSH: YES.

THE COURT: BUT WHEN YOU HAVE A SINGLE DRAWING, THAT'S WHY I'M A LITTLE BIT CHALLENGED IN TRYING TO FIGURE OUT HOW TO DO IT IF YOU HAVE A SINGLE DRAWING.

MR. WALSH: AND I UNDERSTAND THAT, YOUR HONOR. BUT, AGAIN, THE FEDERAL CIRCUIT HAS BEEN VERY CLEAR THAT IT'S JUST THE MINIMUM STRUCTURE REQUIRED FOR THAT FUNCTION.

SO HERE, AGAIN, WE HAVE A DEPENDENT CLAIM TWO THAT INCLUDES:

> "WHEREIN, THE MEANS FOR MONITORING INCLUDES THE IMMEDIATE DATA AND THE THRESHOLD DETERMINATION,"

WHICH, AGAIN, GETS TO THE POINT THAT YOU MADE THIS MORNING.

AGAIN, WE BELIEVE IT'S JUST THE COUNTER, THE THRESHOLD STORE AND THE COMPARATOR, AS WELL AS THE INTERCONNECTING CIRCUITRY THAT ARE NECESSARY TO PERFORM THAT FUNCTION.

HERE WE HAVE TWO FIGURES, YOUR HONOR, AND THE FIGURE 11 AND FIGURE 12. THE COUNTER IS RIGHT HERE (INDICATING), IS 300, THIS BLOCK RIGHT HERE (INDICATING).

THE LINE THAT GOES OUT THROUGH THIS ADDER BECOMES DOWNLOAD BYTE RESIDENT TEN, RIGHT HERE (INDICATING).

THAT'S THE SAME INPUT RIGHT HERE ON FIGURE 12. AND IN FIGURE 12 YOU HAVE 320, THE THRESHOLD STORE, AND YOU HAVE THE COMPARATOR 321, RIGHT HERE (INDICATING).

THESE ARE THE STRUCTURES THAT ARE REQUIRED TO MONITOR THE DATA THAT IS DISCUSSED IN CLAIM ONE. AND IN CONTRAST, IN CLAIM TWO IT, AGAIN, SAYS:

> "WHEREIN, THE MEANS FOR MONITORING INCLUDES THE IMMEDIATE DATA IN THE THRESHOLD DETERMINATION."

BUT WHAT'S HIGHLIGHTED IN BLUE HERE IS THE IMMEDIATE DATA. AND SO HERE YOU HAVE -- THE DESCRIPTION SHOWS AN ADDER ON THE CIRCUITRY LEADING TO THE DOWNLOAD COMPARE. BUT THAT'S NOT NECESSARY TO PERFORM THIS FUNCTION OF CLAIM ONE. IT'S ONLY NECESSARY IN THIS INPUT HERE. IT'S ONLY NECESSARY FOR DEPENDENT CLAIM TWO. AND THAT'S WHY WE BELIEVE THAT IT'S IMPROPERLY INCLUDED IN THE STRUCTURE.

AGAIN, THE WENGER CASE THAT WE TALKED ABOUT THIS MORNING, THE GOLIGHT CASE THAT SAYS IT'S NOT MINIMUM STRUCTURE REQUIRED TO PERFORM THE RECITED FUNCTION ARE SUPERFLUOUS TO THE 112-6 INQUIRY.

YOUR HONOR, THAT BRINGS US TO THE HOST INTERFACE MEANS, THE FIRST HOST INTERFACE MEANS CLAIM, HOST INTERFACE MEANS FOR MANAGING.

THERE ARE A COUPLE OF POINTS HERE, YOUR HONOR, THAT I WANTED TO HIGHLIGHT AS WE GO THROUGH. THE FIRST IS THIS MORNING, YOU KNOW, MR. STEPHENS SPENT A LONG TIME DISCUSSING THE

VARIOUS ELEMENTS THAT MIGHT BE INCLUDED IN THIS HOST INTERFACE MEANS FOR MANAGING CLAIM.

AND I KNOW THERE WERE REFERENCES TO POINTERS. AND CERTAINLY THE DEFENDANTS ARGUE THAT POINTERS ARE REQUIRED STRUCTURE, EVEN FOR HOST INTERFACE MEANS FOR MANAGING. BUT AS YOU CAN SEE HERE, YOUR HONOR, THEY POINT TO A LOT MORE THAN POINTERS AS REQUIRED STRUCTURE.

THEY TALK ABOUT TRANSFER DESCRIPTORS, TRANSFER DESCRIPTOR LOGIC, VIEW LOGIC, FAR BEYOND JUST THE POINTERS THAT WERE MENTIONED THIS MORNING.

AGAIN, IT'S OUR PROPOSED STRUCTURE, WE BELIEVE, IS DOWNLOAD DMA LOGIC, UPLOAD DMA LOGIC, A BUFFER MEMORY AND A HOST SYSTEM. TO BE HONEST, YOUR HONOR, THE DEFENDANTS HAD PREVIOUSLY INDICATED THAT THEY BELIEVED A BUFFER MEMORY WAS A REQUIRED STRUCTURE HERE. TO NARROW THE ISSUES WE INCLUDED A BUFFER MEMORY HERE.

IF THEY DON'T BELIEVE IT'S NECESSARY, THEN I DON'T THINK WE WOULD NECESSARILY DISPUTE THAT. I THINK WE WOULD AGREE TO THAT.

THEY DO ARGUE, HOWEVER, THAT THE HOST SYSTEM, INCLUDING HOST MEMORY, THEY HAVE ARGUED THAT THAT IS NOT REQUIRED STRUCTURE.

BUT I WOULD LIKE TO POINT YOU TO RIGHT HERE. THEY HAVE IN THEIR REQUIRED STRUCTURE ADAPTER INTERFACE ADDRESS BLOCK IN HOST MEMORY SPACE.

SO IT MAY BE SINCE WE GOT THIS STRUCTURE THEY HAVE CHANGED THEIR STRUCTURE AGAIN. THEY HAVE DONE IT SEVERAL TIMES, SO THAT'S POSSIBLE.

BUT THE BOTTOM LINE IS THAT AT THE LAST WE HEARD THEY WERE INCLUDING THE ADAPTER INTERFACE ADDRESS BLOCK IN HOST MEMORY SPACE AS A REQUIRED STRUCTURE.

SO GETTING TO THE SPECIFICS HERE, AGAIN, THIS IS THE MEANS FOR MANAGING. THE '313 PATENT HAS A NUMBER OF EMBODIMENTS. THEY RANGE IN COMPLEXITY. THERE IS MANAGEMENT OF THE COMMUNICATIONS BETWEEN THE HOST AND THE BUFFER. THERE'S MAPPING. THEY GO FROM BASIC, WHICH INCLUDE JUST THE MANAGEMENT OF THE ACTUAL DATA TRANSFERS TO THE MORE COMPLEX. BUT NOT ALL THE EMBODIMENTS ARE REQUIRED IN CLAIM ONE.

THIS -- I KNOW YOU'VE SEEN THIS BEFORE -- BUT THIS IS THE HOST INTERFACE CIRCUITRY THAT WE'RE TALKING ABOUT.

AGAIN, CLAIM ONE ONLY TALKS ABOUT THE MANAGING DATA TRANSFERS. I THINK IT'S ALSO IMPORTANT TO NOTE THE COURT HAS ALREADY CONSTRUED OPERATIONS TRANSPARENT TO THE HOST SYSTEM. AND THAT'S BEEN CONSTRUED AS OPERATIONS PERFORMED INDEPENDENTLY OF MANAGEMENT BY THE HOST SYSTEM, NOT OPERATIONS THAT DO NOT INVOLVE THE HOST SYSTEM.

THAT'S WHAT THE DEFENDANTS ARGUED IN THE FIRST CLAIM CONSTRUCTION PROCEEDING. THE COURT REJECTED THAT POSITION, BUT THE DEFENDANTS HAVE NOT TAKEN THAT INTO ACCOUNT IN SOME OF THEIR ARGUMENTS.

AGAIN, THIS IS JUST A COMPARISON TO CLAIM 13. YOU WENT INTO DETAIL ON THIS THIS MORNING, SO I WON'T GO THROUGH THE DETAILS AGAIN. BUT IT DOES DEAL WITH THE MAPPING OF DATA THAT'S NOT REFERENCED IN CLAIM ONE.

THIS IS WHAT WE BELIEVE TO BE THE ONLY REQUIRED STRUCTURE.

THE DOWNLOAD DMA IN THE SPEC IS RESPONSIBLE FOR ISSUING REQUESTS FOR BUS MASTER DOWNLOADS OF DATA FROM THE HOST SYSTEM.

UPLOAD DMA LOGIC MANAGES TRANSFERS FROM THE RECEIVER BUFFER TO THE ADAPTER.

AGAIN, WE'VE MENTIONED THIS, THE WENGER CASE THAT THEY ARE IMPORTING LIMITATIONS FROM DEPENDENT CLAIMS.

IMPORTANTLY, AGAIN, FOR THE TRANSMIT DESCRIPTOR LOGIC FOR MAPPING, THESE ARE FUNCTIONS THAT ARE IN THE DEPENDENT CLAIMS THAT DON'T BELONG IN INDEPENDENT CLAIM ONE.

THE SAME THING WITH VIEW LOGIC. VIEW LOGIC IS ALSO MENTIONED IN CLAIM 11. WE DON'T BELIEVE IT'S -- AND IT'S DEPENDENT UPON CLAIM ONE. WE DON'T BELIEVE IT'S APPROPRIATE TO INCORPORATE THAT IN.

AGAIN, WE MENTION BUFFER MEMORY. WE MENTIONED THEY BELIEVED BUFFER MEMORY WAS REQUIRED. IF THEY DON'T, I THINK WE CAN AGREE WITH THAT.

WE DISAGREE WITH THEM ON THE HOST SYSTEM, THOUGH.

"THE HOST INTERFACE MEANS MANAGES DATA TRANSFERS

TO AND FROM THE HOST MEMORY IN THE HOST SYSTEM BY ACCESSING ADDRESSES ON THE HOST ADDRESS SPACE. AND THE HOST ELEMENTS ALL RESIDE IN THE HOST SYSTEM."

AND AS I MENTIONED, THEY HAVE LISTED AS REQUIRED STRUCTURE:

"THE ADAPTER INTERFACE ADDRESS BLOCK IN HOST MEMORY SPACE."

AND THIS WAS THE POINT I WAS MAKING, YOUR HONOR, WITH THE HOST MEMORY SPACE ISSUE. THE DEFENDANTS IN MAKING THEIR HOST INTERFACE MEANS ARGUMENTS SUGGEST THAT OUR POSITIONS HAVE TO BE WRONG BECAUSE THEY, IN SOME WAY, INVOLVE HOST ELEMENTS.

BUT, YOUR HONOR, THEY NEGLECT TWO OF THE CONSTRUCTIONS FROM YOUR FIRST ORDER, ONE BEING "HOST ADDRESS SPACE," WHICH THE COURT HELD WERE ADDRESSES ON THE HOST SYSTEM BUS THAT BE CAN BE USED AS SPACE FOR DATA THAT IS IN THE HOST, AS WELL AS THE OPERATIONS TRANSPARENT TO THE HOST SYSTEM.

THE COURT HAS NOT HELD THAT THAT TERM MEANS THAT NOTHING IN THE HOST SYSTEM CAN BE INVOLVED. IT HAS SIMPLY HELD THAT THE OPERATIONS HAVE TO BE PERFORMED INDEPENDENTLY OF MANAGEMENT BY THE HOST SYSTEM, WHICH OUR CONSTRUCTIONS COMPORT WITH.

NOW, THIS -- I DO WANT TO DEAL WITH THIS, TOO, YOUR HONOR. THE DEFENDANTS HAVE A NEW INVALIDITY THEORY THAT THEY HAVE NOW ARGUED WITH RESPECT TO ALL OF THE INTERFACE, BOTH THE HOST -- I BELIEVE BOTH WITH THE HOST AND THE NETWORK INTERFACE

MEANS CLAIMS.

THIS IS A NEW THEORY, AND THE TOP PART IT'S NOT TIMELY. I DON'T BELIEVE ANY OF THE FOUR ARE MENTIONED IN THEIR INVALIDITY CONTENTIONS, EVEN THEIR AMENDED INVALIDITY CONTENTIONS. AND WE DON'T POINT THAT OUT NECESSARILY AS A GOTCHA ARGUMENT.

WE POINT IT OUT, YOUR HONOR, JUST TO MAKE THE POINT THAT THEY CLAIM THAT THIS TERM IS INDEFINITE, YET FOR ABOUT TWO YEARS WITH LOTS OF LAWYERS POURING THROUGH THAT THEY NEVER CAME UP WITH THAT ARGUMENT.

SO, OBVIOUSLY, THEY UNDERSTOOD THE TERM UNTIL VERY RECENTLY. THEREFORE, IT CAN'T BE INSOLUBLY AMBIGUOUS WITHIN THE MEANING OF NINTH CIRCUIT CASE LAW.

SUBSTANTIVELY, YOUR HONOR, THEY POINT TO THE WMS GAMING CASES AND ITS PROGENY TO ARGUE THAT WHAT'S BEEN CLAIMED IN THESE TERMS IS SIMPLY FUNCTIONAL LANGUAGE THAT DOES NOT DEFINE ANY STRUCTURE.

THAT'S SIMPLY NOT THE CASE, YOUR HONOR. WHAT THEY ARE ARGUING FOR WOULD BE A DRAMATIC EXPANSION OF THE WMS GAMING CASES. THOSE CASES REFER TO MEANS-PLUS-FUNCTION TERMS IN WHICH A GENERAL PURPOSE COMPUTER IS THE STRUCTURE CORRESPONDING TO THE FUNCTIONAL LIMITATION.

AND WHAT WE HAVE HERE IS STRUCTURE THAT IS NEITHER GENERAL PURPOSE NOR A COMPUTER. THE WMS GAMING CASES ARE JUST NOT APPLICABLE. RATHER, HERE WE'RE DEALING WITH CIRCUITRY THAT

CAN ONLY PERFORM SPECIFIC LIMITED TASKS.

HOST INTERFACE LOGIC IS ONE OF THE CIRCUITS THAT IS DISCUSSED THAT PERFORMS COMMUNICATIONS AND DATA TRANSFERS WITH THE HOST.

AND ALSO AS THE DEFENDANTS HAVE POINTED OUT -- AND I CAN POINT YOU BACK TO THE SLIDES THAT WE JUST SHOWED -- THEY HAVE FOUND A LOT OF STRUCTURE THAT CORRESPONDS WITH THESE TERMS. AND TO ARGUE NOW THAT THEY CAN'T FIND ANY THAT'S NOT FUNCTIONAL IS, WE BELIEVE TO BE DISINGENUOUS.

THE NEXT TERM, YOUR HONOR, IS THE HOST INTERFACE MEANS FOR MAPPING. AGAIN, THIS WAS DISCUSSED AT LENGTH THIS MORNING.

BUT, AGAIN, THE IMPORTANCE, I THINK, IS TO RECOGNIZE THE DISTINCTION IN THE FUNCTION. THE FUNCTION IS:

> "MAPPING DATA ADDRESSED TO THE FIRST AREA INTO THE TRANSMIT BUFFER, MAPPING DATA IN THE RECEIVE BUFFER INTO THE SECOND AREA, AND UPLOADING DATA FROM THE RECEIVE BUFFER TO THE HOST."

THAT IS VERY DIFFERENT FROM THE FUNCTION IN CLAIM ONE. AND THIS IS THE STRUCTURE, AGAIN.

AGAIN, WE JUST WENT THROUGH THE FUNCTION ITSELF. THESE ARE THE SPECIFIC DIFFERENCES BETWEEN THE MANAGING DATA TRANSFERS AND THE VARIOUS MAPPING AND UPLOADING FUNCTIONS.

DESPITE THESE OBVIOUS DIFFERENCES, THE DEFENDANTS PROPOSE NEARLY IDENTICAL STRUCTURE FOR BOTH CLAIM TERMS. THERE

ARE THREE DISCRETE FUNCTIONS. I THINK THE DEFENDANTS AGREE WITH THIS AND MENTIONED THIS THIS MORNING. WE BELIEVE THESE ARE THE CLAIM ELEMENTS THAT ARE INVOLVED IN THAT. AGAIN, AS FAR AS -- WELL, THE DOWNLOAD DATA POINTER; TRANSFER AREA REGISTER; UPLOAD DMA LOGIC; BUFFER MEMORY; HOST SYSTEM AND THE INTERCONNECTING CIRCUITRY, WE BELIEVE, ARE ALL REQUIRED TO PERFORM THE RECITED FUNCTION.

THIS DISCUSSES, YOUR HONOR, WE BELIEVE, THIS DOWNLOAD DATA POINTER IS NECESSARY BECAUSE THE POINTERS, WE BELIEVE, ARE WHAT MAP THIS DATA. AND THE DOWNLOAD DATA POINTER POINTS TO THE LOCATION WITHIN THE TRANSMIT BUFFER WHERE THE DOWNLOAD PROCESS IS JUST WRITING THE DATA.

AND THIS ALLOWS THE HOST INTERFACE LOGIC TO MAP THE DATA FROM THE PRESPECIFIED BLOCK OF HOST ADDRESS SPACE INTO THE TRANSMIT BUFFER ITSELF.

THE TRANSFER AREA REGISTER HAS A SIMILAR FUNCTION, BUT GOING IN A DIFFERENT DIRECTION. IT'S MAPPING DATA IN THE RECEIVE BUFFER INTO THE SECOND AREA, THE UPLOAD AREA OF THE PRESPECIFIED BLOCK OF HOST ADDRESS SPACE.

AND IT SUPPLIES THE ADAPTER WITH POINTERS FOR TRANSFER OF THE RECEIVED FRAMES. IT WRITES IT, WRITING TD DATA POINTERS TO THIS REGISTER TELLS THE ADAPTER WHERE IN THE HOST MEMORY THE CURRENT RECEIVE FRAME SHOULD BE TRANSFERRED.

AND THEN, UPLOAD DMA LOGIC IS THE LOGIC THAT ACTUALLY UPLOADS THE DATA ITSELF. AND, AGAIN, THEY HAVE MENTIONED THAT

THEY BELIEVE VIEW LOGIC IS INCLUDED. WE WOULD ASK YOU JUST TO TAKE A LOOK AT DEPENDENT CLAIM 20 THAT SPECIFICALLY REFERENCES THE VIEW LOGIC.

THAT'S, AGAIN, JUST REITERATING WHAT WE BELIEVE TO BE THE REQUIRED STRUCTURE. AND, AGAIN, AS THEY HAVE WITH THE OTHER MEANS TERMS, THEY HAVE IDENTIFIED STRUCTURE THAT'S NOT NECESSARY TO PERFORM THE RECITED FUNCTION.

THE OTHER POINTERS THAT THEY MENTION, YOUR HONOR, JUST PREVIOUSLY, THE CURRENT HOST DESCRIPTOR AND HOST WRITE POINTER, THOSE ARE ONLY DESCRIBED BY THE SPECIFICATION IN CONJUNCTION WITH EMBODIMENTS THAT USE DESCRIPTORS.

THEY ARE ONLY NECESSARY TO PERFORM THE FUNCTION OF DEPENDENT CLAIM 14 THAT TALKS ABOUT DESCRIPTORS.

THE TRANSFER DESCRIPTOR LOGIC AND VIEW LOGIC HAS SIMILAR FLAWS.

THOSE ARE THE TWO HOST INTERFACE MEANS ELEMENTS, YOUR HONOR. THE NETWORK INTERFACE MEANS FOR MANAGING DATA TRANSFERS, AGAIN, I KNOW YOU TALKED ABOUT THIS THIS MORNING. THIS IS THE CIRCUITRY BETWEEN THE BUFFER AND THE NETWORK TRANSCEIVER.

A LOT OF THE ISSUES, FRANKLY, ARE VERY SIMILAR. AND SO I DON'T WANT TO BELABOR THESE POINTS AGAIN. THE FUNCTIONS IN THE TWO ARE VERY DIFFERENT. MANAGING DATA TRANSFERS BETWEEN THE BUFFER MEMORY AND THE NETWORK TRANSCEIVER IS CLAIM ONE.

THIS CLAIM ELEMENT, WE BELIEVE, INVOLVES BUFFER MEMORY, TRANSCEIVER. WELL, THE CLAIM ELEMENTS HERE ARE BUFFER

MEMORY, TRANSCEIVER AND THE MEANS FOR MANAGING DATA TRANSFERS BETWEEN THE BUFFER AND THE TRANSCEIVER.

THESE ARE THE REQUIRED STRUCTURES TO PERFORM THAT FUNCTION. THE PARTIES AGREE THAT THE TRANSMIT DMA LOGIC IS REQUIRED. IT'S THE INTERFACE BETWEEN THE BUFFER MEMORY AND THE NETWORK TRANSCEIVER. AND IT'S RESPONSIBLE FOR TRANSMITTING THE DATA FROM THE BUFFER MEMORY TO THE NETWORK TRANSCEIVER.

AGAIN, THEY TRY TO INCLUDE TRANSMIT DESCRIPTORS HERE, YOUR HONOR. AND THAT RUNS AFOUL OF WENGER AND OTHER FED. CIRCUIT CASES BECAUSE OF THE FACT THAT IT'S TRYING TO INCORPORATE FUNCTIONS THAT ARE IN DEPENDENT CLAIMS.

THE RECEIVE DMA LOGIC, THIS IS ALSO A REQUIRED STRUCTURE. BUT THE DEFENDANTS BELIEVE -- THEY ATTEMPT TO IMPORT THE LIMITATIONS FROM OTHER CLAIMS, AGAIN, WITH TRANSMIT DESCRIPTORS AND ASSOCIATED POINTERS THAT ARE FOUND IN THE EMBODIMENT IN CLAIM 28.

AND, FINALLY, YOUR HONOR, THIS IS THE NETWORK INTERFACE MEANS THAT INVOLVES THE MAPPING FUNCTION FOR TRANSFERRING DATA AND MAPPING DATA.

IT'S SPECIFICALLY TRANSMITTING DATA FROM THE TRANSMIT BUFFER TO THE NETWORK TRANSCEIVER AND MAPPING DATA INTO THE RECEIVE BUFFER FROM THE NETWORK TRANSCEIVER.

THIS IS THE -- I'M SORRY. THIS IS THE STRUCTURE THAT WE BELIEVE IS REQUIRED. AS YOU CAN SEE HERE, THE DEFENDANTS BELIEVE IT'S THE EXACT SAME STRUCTURE DESPITE THE DIFFERENCE

BETWEEN THE FUNCTIONS.

AGAIN, I DON'T WANT TO BELABOR THIS POINT. I THINK WE WENT THROUGH IT THIS MORNING. BUT THIS FUNCTION DOES INVOLVE TRANSFERRING DATA AND MAPPING DATA, WHICH IS WHY WE BELIEVE THERE SHOULD BE ADDITIONAL DATA HERE. THESE ARE THE OBVIOUS DIFFERENCES BETWEEN THE TWO CLAIMS.

THIS, WE BELIEVE, IS THE REQUIRED STRUCTURE. AGAIN, THE TRANSFERRING DATA VERSUS THE MAPPING OF DATA, WE BELIEVE, IS A KEY DISTINCTION.

AND I WOULD LIKE TO ADD, YOUR HONOR: I THINK, AGAIN, A LOT OF THIS IS REPETITIVE. THEY HAVE MADE THE SAME INVALIDITY ARGUMENT. I BELIEVE THEY MADE THE SAME INVALIDITY ARGUMENT WITH EACH OF THESE HOST AND NETWORK INTERFACE MEANS TERMS. THE ARGUMENTS, I BELIEVE, ARE IDENTICAL AS FAR AS THE SUBSTANCE IS CONCERNED. BUT, AGAIN, WE BELIEVE IT'S CLEAR THAT THE WMS GAMING CASE AND ITS PROGENY DON'T APPLY.

AND I'M NOT SURE HOW MUCH TIME I HAVE LEFT, BUT IF IT'S OKAY WITH YOU I WOULD JUST GO AHEAD WITH THE LOGIC TERMS --

THE COURT: SURE.

MR. WALSH: -- IF THAT'S OKAY WITH YOU.

THE COURT: CERTAINLY.

MR. WALSH: YOUR HONOR, IT PROBABLY WOULD HAVE BEEN BETTER, QUITE FRANKLY, TO START WITH THE LOGIC TERMS RATHER THAN WANDER INTO THE MEANS-PLUS-FUNCTION LAND BEFOREHAND, BUT WE ARE WHERE WE ARE, SO -- BUT THE LOGIC TERMS, AS YOU KNOW, THERE ARE

VARIOUS TERMS WITHIN THE PATENT THAT ARE USED IN THE CLAIMS AND THE SPECIFICATION THAT EMPLOYS THIS LOGIC ELEMENT.

IN THE FIRST CLAIM CONSTRUCTION ORDER THE COURT ASKED US TO IDENTIFY TEN TERMS, LOGIC TERMS FOR THE PURPOSE OF INFORMING THE COURT AS TO HOW "LOGIC" SHOULD BE CONSTRUED. I THINK THAT'S VERY RELEVANT, YOUR HONOR, BECAUSE IF YOU LOOK AT THE CHART, I THINK THE DEFENDANTS JUST SUBMITTED ANOTHER CHART TO YOU. THEY DON'T IDENTIFY THE LOGIC TERMS. THEY IDENTIFY ENTIRE PHRASES THAT INCLUDE A LOGIC TERM, AND ASK THE COURT TO CONSTRUE THOSE.

BUT IN ANY EVENT, WE BELIEVE THAT EACH LOGIC TERM SELECTED REFLECTS THAT THE PROPER CONSTRUCTION IS CIRCUITRY. AND THAT THE TERM ITSELF CONNOTES SUFFICIENT STRUCTURE TO AVOID 112-6.

JUST SOME GENERAL PRINCIPLES, YOUR HONOR. IT IS ENTIRELY PERMISSIBLE FOR THE COURT -- THE COURT ASKED IN ITS OPENING CLAIM CONSTRUCTION BRIEF WHETHER IT WAS PERMISSIBLE TO LEAVE THE IMPLEMENTATION OF LOGIC UNSPECIFIED AS FAR AS HARDWARE OR SOFTWARE IS CONCERNED. WE BELIEVE THE CASE LAW SHOWS THAT THAT IS PERMISSIBLE, YOUR HONOR. THE 3COM VERSUS D-LINK CASE INVOLVING THREE OF THESE SAME PATENTS REACHED THAT CONCLUSION. IT CITED TO THE LINEAR TECHNOLOGY CASE IN REACHING THAT DECISION.

THE ADAMS VERSUS DELL CASE IN UTAH, AGAIN, IT FOUND THAT A SYSTEM CLOCK CAN INCLUDE AN ELEMENT MADE UP OF HARDWARE,

SOFTWARE, SOME COMBINATION OF THE TWO. THE KERNIUS CASE HAD A SIMILAR FINDING. AND WHILE A PERSON OF ORDINARY SKILL IN THE ART WOULD UNDERSTAND "LOGIC" TO MEAN "CIRCUITRY" IN THE CONTEXT OF THESE PARTICULAR PATENTS, THE FOUR PATENTS THAT ARE AT ISSUE HERE, A CONSTRUCTION THAT ACKNOWLEDGES THE POSSIBILITY OF PROGRAMMING IN CONNECTION WITH THAT CIRCUITRY WOULD NOT RENDER THE LOGIC TERM INDEFINITE.

BUT SETTING THAT ISSUE ASIDE, AGAIN, WE BELIEVE THAT THE PROPER ANALYSIS OF THE TERM "LOGIC" IN THESE PATENTS INDICATES THAT IT'S USED CONSISTENTLY TO DENOTE "CIRCUITRY," AND, FRANKLY, SPECIFIC TYPES OF CIRCUITRY.

SOME VERY IMPORTANT CONTROLLING LAW, YOUR HONOR -- AND YOU REFERENCED SOME OF THESE CASES IN YOUR INITIAL CLAIM CONSTRUCTION BRIEF. BUT, FRANKLY, DUE TO THE SORT OF HECTIC NATURE OF BRIEFING I DON'T THINK WE HAD A REALLY GOOD OPPORTUNITY TO ADDRESS THESE DIRECTLY.

BUT THE WATTS CASE THAT YOU CITED MADE IT VERY CLEAR THAT EACH LOGIC TERM, BECAUSE IT DOES NOT INCLUDE THE MEANS INDICATOR, IT HAS A PRESUMPTION AGAINST 112-6. BECAUSE MEANS WAS OBVIOUSLY INTENTIONALLY OMITTED I DON'T THINK THERE'S A DISPUTE THERE.

APPLYING 112-6 TO A LOGIC TERM JUST BECAUSE IT CONTAINS FUNCTIONAL LANGUAGE LIKE "TRANSFERRING" WOULD LIMIT CLAIMS IN A MANNER THAT WAS NEVER INTENDED BY CONGRESS. AND THAT'S WHAT THE FED. CIRCUIT HELD IN THE O.I. CORPORATION CASE.

AND THEN, FINALLY, TO THE EXTENT ANY FUNCTIONAL LIMITATIONS ARE FOUND, EACH LOGIC TERM HERE AVOIDS 112-6 BECAUSE THE TERM ITSELF IDENTIFIES SUFFICIENT STRUCTURE TO PERFORM IT. AND TO THAT QUESTION WE GET TO THE GREENBERG CASE, WHICH IS THE PREDECESSOR TO THE WATTS CASE.

AND WHAT GREENBERG AND WATTS TELL US -- WELL, FIRST, THE FEDERAL CIRCUIT HAS MADE IT CLEAR THAT A TERM NEED NOT IDENTIFY A SINGLE WELL-DEFINED STRUCTURE TO AVOID 112-6. I THINK THAT'S A VERY IMPORTANT POINT. AND, AGAIN, THAT'S IN THE GREENBERG FED. CIRCUIT CASE IN 1996 AND THE WATTS CASE THAT FOLLOWED.

AND AS THE COURT ALSO NOTED IN ITS FIRST CLAIM CONSTRUCTION ORDER:

> "SUFFICIENT STRUCTURE MAY BE DISCLOSED WHEN A TERM, AS THE NAME FOR STRUCTURE, HAS A REASONABLY WELL UNDERSTOOD MEANING IN THE ART."

AND I DON'T THINK THAT'S IN DISPUTE. I THINK YOU ACTUALLY QUOTED THAT EXACT SAME LANGUAGE IN THE OPENING CLAIM CONSTRUCTION ORDER.

AND THAT'S ALSO REFERENCED IN GREENBERG. AND THAT'S VERY RELEVANT HERE, YOUR HONOR, BECAUSE UNDER THAT CONTROLLING LAW THE LOGIC TERMS HAVE TO AVOID 112-6. AND THERE'S PLENTY OF EVIDENCE TO SUGGEST THAT. AND THE FIRST IS THAT THE DEFENDANTS -- AND THIS IS, FRANKLY, YOUR HONOR, SOMETHING THAT WAS NOT IN OUR BRIEF, SO I DO WANT TO EMPHASIZE IT. THE

DEFENDANTS HAVE PREVIOUSLY ARGUED THAT THE MAJORITY OF THE LOGIC TERMS THAT ARE AT ISSUE HERE IDENTIFY COMPONENTS THAT ARE AT LEAST REASONABLY WELL UNDERSTOOD IN THE ART. AND I'LL SHOW THAT IN OUR SLIDES HERE.

IN ADDITION, YOUR HONOR, THE DEFENDANT'S OWN PATENT FILINGS DEMONSTRATE THAT CERTAIN LOGIC TERMS AT ISSUE ARE COMMONLY UNDERSTOOD WITHIN THE ART. AND, MOREOVER, THERE IS NO EVIDENCE THAT ANY OF THE LOGIC TERMS THAT ARE AT ISSUE HERE ARE NOT WELL-UNDERSTOOD BY ONE IN THE ART. THERE'S BEEN NO EVIDENCE SUBMITTED THAT THAT'S THE CASE.

THE COURT: HOW ABOUT "RECEIVE LOGIC"?

MR. WALSH: I CAN -- WELL, WE CAN GO SPECIFICALLY TO THAT, IF YOU WOULD LIKE TO, YOUR HONOR.

LET ME SEE IF THE -- WE DO BELIEVE, YOUR HONOR -- AND, AGAIN, RECEIVE LOGIC IS A LITTLE FARTHER DOWN IN THE PRESENTATION. BUT FOR THE REASONS THAT ARE SHOWN IN THE LINEAR TECH CASE, WHICH I DON'T BELIEVE WE HAVE UP FRONT HERE. YES, HERE IT IS.

RECEIVE LOGIC -- THE RECEIVE LOGIC, I DON'T BELIEVE, IS SPECIFICALLY REFERENCED IN THE DEFENDANT'S INVALIDITY CONTENTIONS, BUT THE SOQUE HOLDINGS CASE THAT THE DEFENDANTS CITE, AS WELL AS LINEAR TECHNOLOGIES CASE IS THAT CITED IN THAT CASE APPLIES DIRECTLY TO THE RECEIVE LOGIC FUNCTION.

AND WHAT THE SOQUE CASE HELD THAT THE LINEAR TECHNOLOGY RULE OF AVOIDING 112-6 DID NOT APPLY BECAUSE THE

CLAIM LIMITATION AT ISSUE WAS SIMPLY A GENERAL PURPOSE COMPUTER.

SO IN THAT CASE YOU HAD A GENERAL PURPOSE COMPUTER. THERE WAS NO OTHER LANGUAGE THAT WOULD MAKE IT A SPECIFIC PURPOSE COMPUTER. AND UNDER WMS GAMING AND ITS PROGENY THAT'S NOT ENOUGH.

BUT WHAT LINEAR TECHNOLOGY HELD WAS -- THAT INVOLVED AN ACTUAL CIRCUIT, A CIRCUIT FOR DOING SOMETHING. AND WHAT LINEAR TECHNOLOGY HELD WAS THAT THE CIRCUIT TERM AVOIDED 112-6 BECAUSE AS IS THE CASE HERE WITH "RECEIVE LOGIC" AND THESE OTHER TERMS:

> "THE STRUCTURE-CONNOTING TERM HERE 'RECEIVE LOGIC' WAS COUPLED WITH A DESCRIPTION OF THE CIRCUIT'S OPERATION."

RECEIVE LOGIC FOR MAPPING RECEIVE DATA FROM THE NETWORK TRANSFER TO THE BUFFER MEMORY. AND UNDER LINEAR TECHNOLOGY THAT'S ALL YOU NEED, YOUR HONOR, IS A STRUCTURE-CONNOTING TERM COUPLED WITH A DESCRIPTION OF THE CIRCUIT'S OPERATION.

NOW, THEY SAY THAT'S NOT ENOUGH BECAUSE IT'S FUNCTIONAL LANGUAGE. BUT THAT FLIES RIGHT IN THE FACE OF LINEAR TECHNOLOGY.

SO I WOULD LIKE TO NOTE, YOUR HONOR, THE DEFENDANT'S IRRECONCILABLE POSITIONS HERE. THEY ARGUE THAT EIGHT OF THE TEN LOGIC TERMS MUST BE CONSTRUED UNDER 112-6 BECAUSE THEY FAIL TO RECITE OR REFER TO TERMS THAT ARE REASONABLY WELL UNDERSTOOD IN

THE ART AS NAMES FOR STRUCTURE.

AND ACTUALLY, YOUR HONOR, I HAVE BEEN TOLD THAT THE RECEIVE LOGIC IS CITED IN THE INVALIDITY CONTENTIONS JUST AS HOST INTERFACE LOGIC IS. BUT THE DEFENDANTS PREVIOUSLY ARGUED THE EXACT OPPOSITE IN THEIR INVALIDITY CONTENTIONS. THAT THE LOGIC TERMS AT ISSUE ARE WELL-KNOWN STRUCTURES IN THE ART. THEY ARGUED IN THEIR INVALIDITY CONTENTIONS AT THAT TIME ONE OF ORDINARY SKILL IN THE ART KNEW THAT ANY SUCH CONTROLLER OR ADAPTER WOULD UTILIZE HOST INTERFACE LOGIC TO TRANSFER DATA TO AND FROM THE HOST. THEY KNOW WHAT THIS TERM MEANS, YOUR HONOR. IT'S NOT A GENERAL PURPOSE COMPUTER.

THE COURT: WELL, YOU KNOW, I CAN LISTEN TO MORE OF THIS. AND I'VE BENEFITED A LITTLE BIT BY WHAT IS GOING ON. IT'S JUST THAT THERE WERE SO MANY USES OF "LOGIC," SOME WITH MODIFIERS AND SOME WITH NOT.

THE REASON I ASKED ABOUT "RECEIVE LOGIC" IS IT WAS AMONG THE ONES THAT INDICATED TO ME THAT I NEEDED TO PAY ATTENTION TO THAT BECAUSE THE ONE THAT I HAD IN MIND WAS '459, CLAIM 22. AND THIS WAS AN APPARATUS CLAIM. AND THE LIMITATION WAS:

"RECEIVE LOGIC FOR RECEIVING THE DATA FRAME."

AND SO, IT SEEMED TO ME THAT THAT PUT THE INVENTOR IN A POSITION WHERE THE WORD "LOGIC" WAS USED IN A FASHION THAT CAUSED ME TO SAY:

"OKAY. I NEED TO PAY ATTENTION TO THAT BECAUSE

WHAT IS THAT?"

AND THE REASON I ASKED ABOUT IT WAS YOU SAID THAT'S SOMETHING THAT IS COMMONLY KNOWN AND UNDERSTOOD. AND, THEREFORE, AS I UNDERSTAND IT, YOU WOULD HAVE ME CONSTRUE ALL USES OF THAT AS CIRCUITRY.

MR. WALSH: WE WOULD CONSTRUE LOGIC AS CIRCUITRY IN CONNECTION WITH ANYTHING -- AND THE RECEIVE LOGIC MEANS IT'S A SPECIFIC TYPE OF CIRCUITRY. IT'S NOT JUST GENERAL PURPOSE CIRCUITRY. IT'S RECEIVE LOGIC.

AND AS YOU SEE HERE, YOUR HONOR, I HAVE RECEIVE LOGIC TERM FROM THE '459 PATENT HERE, CLAIM 22. WE BELIEVE THE PROPER CONSTRUCTION IS:

"CIRCUITRY CAPABLE OF RECEIVING THE DATA FRAME FROM THE NETWORK TRANSCEIVER TO THE BUFFER MEMORY."

NOW, WE BELIEVE BOTH IN THE CLAIM ITSELF AND THE SPECIFICATION THERE'S SUPPORT FOR THAT CONSTRUCTION. BUT, AGAIN, LINEAR TECHNOLOGY CASE SHOWS US THIS IS THE STRUCTURE-CONNOTING TERM RECEIVE LOGIC THAT'S COUPLED WITH A DESCRIPTION OF ITS OPERATION: FOR RECEIVING THE DATA FRAME FROM THE NETWORK TRANSCEIVER TO THE BUFFER MEMORY.

THAT TELLS ONE OF SKILL IN THE ART EXACTLY WHAT IT IS, OR AT LEAST WITH SUFFICIENT SPECIFICITY. I SHOULDN'T HAVE SAID THAT. IT DOESN'T HAVE TO TELL YOU EXACTLY WHAT IT IS. IT JUST HAS TO HAVE SUFFICIENT SPECIFICITY.

HERE, THIS, YOUR HONOR, IS THE QUESTION YOU HAD

EARLIER. RECEIVE LOGIC AVOIDS 112-6 BECAUSE IT HAS A REASONABLY WELL UNDERSTOOD MEANING IN THE ART.

THE DEFENDANT'S INVALIDITY CONTENTIONS SHOW THAT THIS IS THE CASE. IT'S UNDERSTOOD AS CIRCUITRY THAT MOVES DATA FROM A NETWORK MEDIUM TO AN ADAPTER MEMORY.

SO THIS IS STRAIGHT FROM THEIR INVALIDITY CONTENTIONS.

SO THAT, YOUR HONOR, IS RECEIVE LOGIC. THE OTHER LOGIC TERMS FOLLOW SUIT.

WOULD YOU GO TO 146?

HOST INTERFACE LOGIC. THIS ONE ACTUALLY WAS COVERED, I THINK, IN THE INTRODUCTION. AGAIN, IT'S A STRUCTURE-CONNOTING TERM COUPLED WITH A DESCRIPTION OF ITS OPERATION. HOST INTERFACE LOGIC IS THE STRUCTURE-CONNOTING TERM FOR TRANSFERRING DATA FRAME, ET CETERA, IS THE OPERATION.

THE COURT: I'LL AGREE THAT THERE ARE MANY INSTANCES WHERE THE TERM USED IN THE CLAIM IS ALSO USED IN THE WRITTEN DESCRIPTION. BUT DOES IT HELP ME IN THE QUESTION OF WHETHER -- OF WHAT IT IS? IF I SAY, THEN, ONE OF ORDINARY SKILL IN THE ART WOULD UNDERSTAND EVERY USE OF LOGIC TO BE CIRCUITRY, THAT MIGHT ANSWER THE PROBLEM. IN OTHER WORDS, I WOULDN'T HAVE TO SAY ANYTHING MORE THAN THAT IS YOUR ARGUMENT OTHER THAN SAY LOGIC IS CIRCUITRY. AND THEN, THAT LEAVES THE PARTY WHO HAS ME ADOPT THAT DEFINITION VULNERABLE TO A CLAIM THAT THIS CAN'T BE DONE THROUGH CIRCUITRY. IT'S GOT TO BE DONE SOME OTHER WAY, AND

WE'LL DEAL WITH THAT LATER.

SO I UNDERSTAND YOUR POSITION. THAT MAKES IT EASY FOR ME TO SIMPLY SAY THAT'S THE POSITION YOU WANT ME TO ADOPT. NOW, I HAVE TO PAY ATTENTION TO THE WRITTEN DESCRIPTION AND SEE IF THERE'S SOMETHING INCONSISTENT WITH THAT. BUT I UNDERSTAND THAT.

MR. WALSH: OKAY. FAIR ENOUGH, YOUR HONOR. AND THIS, AGAIN, THIS IS THE SELECTION FROM THE INVALIDITY CONTENTIONS. BUT I THINK THIS IS ALSO IMPORTANT, YOUR HONOR. IT'S NOT JUST THE INVALIDITY CONTENTIONS. THIS IS FROM AN INTEL PATENT THAT WE BELIEVE THE DEFENDANT'S PATENTS ALSO RECOGNIZE SOME OF THESE LOGIC TERMS IN SHOWING THAT THEY ARE REASONABLY WELL-UNDERSTOOD IN THE ART IN WATTS.

HERE THE NETWORK ADAPTER HAS HOST INTERFACE LOGIC THAT PROVIDES FOR COMMUNICATION TO THE HOST SYSTEM. THIS IS FROM AN INTEL PATENT.

ALSO, THIS IS FROM A HEWLETT-PACKARD PATENT THAT SPECIFICALLY REFERENCES THE '459 PATENT, ACTUALLY.

AND IT SAYS:

> "THE NETWORK ADAPTER INCLUDES HOST INTERFACE LOGIC FOR TRANSFERRING THE DATA FRAME BETWEEN THE BUFFER MEMORY AND THE HOST SYSTEM."

THE POINT IS, YOUR HONOR, THESE ARE AT LEAST REASONABLY WELL-UNDERSTOOD TERMS IN THE ART, WELL SUFFICIENT TO AVOID 112-6 SCRUTINY.

AND FOR EACH OF THESE, YOUR HONOR, IN OUR SLIDES HERE WE HAVE AN ALTERNATIVE 112-6 ANALYSIS. I BELIEVE IT'S FAIRLY SELF-EXPLANATORY. IT'S SIMILAR TO THE 112-6 ANALYSIS TO SOME OF THE MEANS TERMS, SO I DON'T WANT TO BELABOR THAT.

BUT I THINK IT IS WORTH MENTIONING, YOUR HONOR, THAT YET AGAIN THESE TERMS, THEY DO DESCRIBE -- FOR INSTANCE, HERE WITH CLAIM 22, THE '459 PATENT, IT'S HOST INTERFACE LOGIC FOR TRANSFERRING THE DATA FRAME FROM THE BUFFER MEMORY. AND IT DOES TELL YOU WHAT THE OPERATIONS ARE. AND THAT, AGAIN, UNDER LINEAR TECHNOLOGY, NOT ONLY TAKES IT OUTSIDE OF 112-6, BUT GIVES YOU AN IDEA OF EXACTLY WHAT IT IS.

THE DEFENDANTS DON'T WANT TO RECOGNIZE THAT. THEY WANT TO SAY IF IT SAYS "HOST INTERFACE LOGIC," YOU IGNORE THE REST OF THE CLAIM LANGUAGE AND YOU CRAM IN EVERYTHING WE CAN FIND THAT'S ASSOCIATED WITH HOST INTERFACE LOGIC TO TELL YOU WHAT IT IS. AND THAT'S IMPROPER.

AND I THINK, YOUR HONOR, UNLESS YOU HAVE ANY QUESTIONS, I WILL SAVE WHATEVER TIME I HAVE LEFT FOR WHATEVER REBUTTAL IS NECESSARY.

THE COURT: CERTAINLY. CERTAINLY.

YOU'RE LIVING ON BORROWED TIME, BUT GO AHEAD.

MR. STEPHENS: I'LL KEEP IT VERY BRIEF, YOUR HONOR.

SO I THINK THE PLACE TO START IS EXACTLY WHERE YOUR HONOR LEFT OFF IN THE FIRST MARKMAN ORDER. YOU CORRECTLY POINTED OUT THAT A PERSON OF ORDINARY SKILL IN THE ART WOULD

UNDERSTAND THAT WITH RESPECT TO COMPUTER SYSTEMS LOGIC CAN BE USED TO MEAN A WIDE RANGE OF THINGS. IT DOESN'T JUST MEAN "CIRCUITRY," AND THAT'S THE FUNDAMENTAL PROBLEM HERE.

AND IF YOU LOOK AT THE PATENTS-IN-SUIT, YOU CAN SEE THAT THEY ARE USED, IN FACT, IN THE PATENTS-IN-SUIT TO MEAN A WIDE RANGE OF THINGS THAT IS NOT LIMITED TO CIRCUITRY. SO IF YOU LOOK, FOR EXAMPLE, AT THE '459 PATENT, IT SAYS THAT FIGURES 12 THROUGH 18 DESCRIBE THE RECEIVE THRESHOLD LOGIC, RIGHT?

SO THIS GIVES YOU A CLUE ABOUT THE KINDS OF THINGS THAT THE PATENTS USE THE WORD "LOGIC" TO DESCRIBE, BECAUSE THEY ARE TELLING YOU THESE FIGURES DESCRIBE LOGIC. THEY SHOW LOGIC.

SO LET'S LOOK AT WHAT THOSE FIGURES SHOW. FIGURE 12 IS A DATA FORMAT. THAT'S NOT A CIRCUIT.

FIGURE 13 IS A FLOW CHART. THAT'S ALSO NOT A CIRCUIT.

FIGURE 16 IS A STATE DIAGRAM, NOT A CIRCUIT.

FIGURE 15. OKAY, FINALLY WE HAVE A CIRCUIT.

SO THERE'S A BUNCH OF DIFFERENT KINDS OF THINGS THAT THE PATENTS USE THE WORD "LOGIC" TO DESCRIBE, MANY, MANY DIFFERENT KINDS OF THINGS. AND IT'S QUITE CLEAR THAT THE AUTHORS OF THE PATENTS DID CONTEMPLATE THAT THE NETWORK INTERFACE PROCESSOR, AS IT'S DESCRIBED IN THE SPECIFICATION, COULD EXECUTE SOFTWARE OF ITS OWN, BECAUSE IT HAD A MEMORY. IT HAD A RAM THAT IS ASSOCIATED WITH IT. THE SPEC TELLS US IT INCLUDED SOME OF ITS OWN SOFTWARE.

NOW, IT DOESN'T REALLY DISCLOSE ANY OF THAT SOFTWARE OTHER THAN TO SAY THAT THERE IS SOME. NO ALGORITHMS RELEVANT TO THESE TERMS ARE DESCRIBED. BUT IT IS CLEAR THAT THAT MAY BE ONE OF THE WAYS THAT THEY HAD IN MIND TO IMPLEMENT THIS. AND, OF COURSE, USING MICROPROCESSORS ON NETWORK INTERFACE ADAPTER CARDS WAS COMMON PRACTICE IN THE EIGHTIES AND NINETIES.

SO IT IS NOT THE CASE THAT YOU WOULD NOT USE A GENERAL PURPOSE MICROPROCESSOR TO IMPLEMENT SOME OF THESE FUNCTIONS. AND THEREIN LIES THE PROBLEM. BECAUSE WHEN YOU USE A WORD LIKE "LOGIC" THAT CAN ENCOMPASS SOFTWARE AND HARDWARE AND DATA FORMATS AND MANY DIFFERENT KINDS OF THINGS, IT'S ACTUALLY BROADER THAN USING THE WORDS "COMPUTER" OR "PROCESSOR" IN A CLAIM.

THE COURT: WELL, WOULDN'T IT BE SUFFICIENT, THOUGH, IF ONE OF SKILL IN THE ART WOULD UNDERSTAND HOW TO SOLVE THAT PROBLEM?

MR. STEPHENS: NO, YOUR HONOR. THE LAW IS QUITE CLEAR THAT IT'S NOT ENOUGH THAT A PERSON OF ORDINARY SKILL WOULD KNOW HOW TO SOLVE IT. YOU HAVE TO ACTUALLY DISCLOSE IT IN THE SPECIFICATION, RIGHT?

AND THE REASON FOR THAT IS, IN PARTICULAR IN THE COMPUTER ARTS, IF YOU HAD A CLAIM WRITTEN TO A PROCESSOR OR A COMPUTER OR, IN THIS CASE, LOGIC, WHICH I THINK IS EVEN BROADER THAN THOSE TERMS, AND YOU CLAIM IT FUNCTIONALLY, THEN ANY WAY THAT A PERSON COULD COME UP WITH FOR PERFORMING THAT PARTICULAR

FUNCTION WOULD THEN BE COVERED, BECAUSE COMPUTER ARE, IN FACT, GENERAL PURPOSE DEVICES.

AND THAT'S WHAT WMS GAMING AND THE RELATED CASES ALL SAY. AND THAT'S PRECISELY THE THING THAT YOU'RE NOT ALLOWED TO DO, THAT 112-6 IS THE ESCAPE HATCH FOR, DISCLAIMING FUNCTIONALLY.

THE COURT: WELL, BUT I KIND OF MADE UP THAT QUESTION BECAUSE IT IS A QUESTION. BUT IS THERE A DIFFERENCE BETWEEN HARDWARE AND SOFTWARE WITH RESPECT TO LOGIC? BECAUSE IS A GATE HARDWARE OR IS IT AN INSTRUCTION?

MR. STEPHENS: WELL, I THINK -- I DON'T PRETEND TO KNOW THIS WITH CERTAINTY, BUT MY BELIEF IS MOST PEOPLE IN THIS FIELD WOULD SAY A GATE IS SOMETHING THAT IS CONSTRUCTED OF TRANSISTORS AND WOULD BE A CIRCUIT.

THE COURT: BUT DOES IT HAVE TO BE? IN OTHER WORDS, A GATE IS A DECISION POINT, RIGHT, WHERE THINGS GO OR DON'T GO OR BECOME A ONE OR A ZERO?

MR. STEPHENS: FAIR ENOUGH.

THE COURT: AND SO YOU CAN DO THAT IN WAYS THAT PERHAPS IT DOESN'T MATTER AS TO WHETHER OR NOT IT'S IMPLEMENTED ONE WAY OR THE OTHER. BUT THAT'S THE QUESTION I WAS ASKING BECAUSE I DID SEE LOGIC, AND I KNOW THAT LOGIC CAN BE BOTH OR A COMBINATION OF THE TWO.

MR. STEPHENS: I THINK IT IS LITERALLY TRUE THAT ANY LOGICAL FUNCTION THAT CAN BE IMPLEMENTED WITH GATES CAN ALSO BE

IMPLEMENTED IN SOFTWARE. SO I THINK IT IS TRUE THAT THERE IS A DIRECT CORRESPONDENCE, YOU KNOW. THAT'S WHY A GENERAL PURPOSE COMPUTER IS CALLED THAT BECAUSE IT'S CAPABLE THROUGH SOFTWARE OF IMPLEMENTING LITERALLY ANY LOGICAL FUNCTION. AND THEREIN LIES THE PROBLEM, RIGHT?

AND THAT'S WHY THE WHOLE LINE OF CASES ABOUT CLAIMING IN THE COMPUTER SPACE ENDED UP WHERE IT DID BECAUSE A GENERAL PURPOSE COMPUTER IS, IN EFFECT, A UNIVERSAL LOGIC CIRCUIT THAT CAN BE USED TO IMPLEMENT ANY LOGICAL FUNCTION.

SO IF YOU CLAIM SOMETHING BY RECITING A COMPUTER, THEN, IN EFFECT, YOU'RE CLAIMING ANY POSSIBLE WAY OF IMPLEMENTING THAT PARTICULAR FUNCTION. AND THE SAME IS TRUE HERE WHEN YOU USE AN EVEN VAGUER WORD LIKE "LOGIC," PARTICULARLY WHEN IN THE CONTEXT OF A PARTICULAR PATENT. IT'S CLEAR THAT THEY ARE USING IT TO --

THE COURT: BUT THE HARDWARE -- I GUESS I WAS CONCERNED IF IT REQUIRES SOMETHING THAT WAS MORE COMPLEX, LIKE SOME KIND OF ALGORITHM. IF I'M TOLD THAT IT'S A CIRCUITRY AND I ADOPT THAT, WHAT'S THE HARM?

MR. STEPHENS: THE HARM IS, YOUR HONOR, THAT THE PATENT DOESN'T SUPPORT THAT, RIGHT? THE PATENT SPECIFICALLY USES THE WORD "LOGIC" TO INCLUDE OTHER TYPES OF IMPLEMENTATIONS.

THE COURT: WELL, BUT I WOULD HAVE TO STUDY THAT. AND THAT DOES -- I APPRECIATE THAT, BECAUSE IT SEEMS TO ME THAT

IF I HAVE A FLOW CHART THAT OUGHT TO TIE TO A METHOD CLAIM, BUT IT COULD TIE TO AN APPARATUS CLAIM, BECAUSE APPARATUS CAN BE DEFINED BY FUNCTION. AND SO FLOW CHARTS AND FUNCTIONS CAN HELP ME DECIDE WHETHER I'M LOOKING AT AN APPARATUS OR I'M LOOKING AT A FUNCTION OR A METHOD.

SO, YOU KNOW, IT MAY BE MORE WORK THAN I NEED TO DO AT THIS POINT IF -- IN OTHER WORDS, PERHAPS I CAN SOLVE THE PROBLEM BY SAYING THAT DECIDING WHETHER OR NOT THE INVENTOR'S LAWYERS WRITE JUST ADOPT HARDWARE OR CIRCUITRY, OR WHATEVER WORD I SEE. AND THEN, I CAN COME BACK TO A PARTICULAR PLACE WHERE THAT DOESN'T WORK. AND THAT WOULD NARROW MY WORK AND SEE WHETHER OR NOT THAT BECOMES A PROBLEM.

MR. STEPHENS: I THINK I UNDERSTAND WHAT YOU'RE GETTING AT, YOUR HONOR, BUT I THINK THEY INTENTIONALLY CHOSE TO CLAIM IT THE WAY THEY DID, RIGHT? "CIRCUIT" IS NOT AN UNCOMMON WORD. CLEARLY, THEY COULD HAVE USED THE WORD "CIRCUIT."

ONE OF THE PROBLEMS, OF COURSE, IS NO CIRCUITRY IS ACTUALLY DISCLOSED FOR MANY OF THE THINGS THAT ARE RECITED AS LOGIC.

I WOULD POINT OUT THAT THERE'S CASE LAW TO THIS EFFECT. THIS IS A CASE ABB VERSUS SCHLUMBERGER RESOURCE. IT'S A DELAWARE CASE IN WHICH JUDGE ROBINSON WAS CONFRONTED WITH EXACTLY THIS ISSUE: IS THE WORD "LOGIC" IN A CLAIM SUFFICIENTLY STRUCTURAL TO AVOID 112-6 TREATMENT?"

AND SHE SAID: "NO."

SO THIS IS NOT -- YOU'RE NOT THE FIRST JUDGE TO DEAL WITH THIS. AND THERE IS PRECEDENT FOR THE POSITION THAT WE'RE TALKING.

AGAIN, I THINK IT MIGHT DEPEND ON THE SPECIFIC CONTEXT, BUT HERE I THINK THE CONTEXT AS I'VE SHOWN YOU, THE DISCLOSURE IN THE SPECIFICATION, MAKES IT CLEAR THAT THE WORD "LOGIC" IS USED, IN FACT, QUITE BROADLY.

AND IF I MAY, JUST TO POINT YOU TO ONE SPECIFIC EXAMPLE, IF YOU LOOK AT THE WAY "TRANSFER DESCRIPTOR LOGIC" IS USED IN THE CLAIMS, IT'S A LOT LIKE THE RECEIVE LOGIC. RECEIVE LOGIC FOR RECEIVING, WHAT DOES THAT REALLY ADD OVER SIMPLY SAYING, YOU KNOW, "GIZMO FOR RECEIVING"?

IF YOU LOOK AT THE ACTUAL DESCRIPTION IN THE SPECIFICATION FOR "TRANSFER DESCRIPTOR LOGIC," IT'S ACTUALLY ONLY MENTIONED FOUR TIMES IN THE ENTIRE SPECIFICATION. AND THE ONLY DESCRIPTION OF IT AT ALL IS PURELY FUNCTIONAL:

> "TRANSFER DESCRIPTOR LOGIC MAPS TRANSFER DESCRIPTORS FROM THE HOST SYSTEM TO THE TRANSFER DESCRIPTOR BUFFER."

THAT'S THE SAME FUNCTION THAT IS RECITED IN THE CLAIM. SO IT IS ACTUALLY QUITE PARALLEL TO THE RECEIVE LOGIC SITUATION WHERE YOU HAVE "RECEIVE LOGIC FOR RECEIVING."

WELL, THAT REALLY DOESN'T DEFINE THINGS ENOUGH TO CHANGE IT FROM JUST CLAIMING ANY POSSIBLE WAY OF RECEIVING.

AND THIS IS A COMMON PROBLEM. THAT'S ONE OF THE

REASONS I WANTED TO POINT YOU TO THIS EXAMPLE. THIS IS A GOOD EXAMPLE BECAUSE THERE'S SO LITTLE DISCUSSION OF THIS TRANSFER DESCRIPTOR LOGIC.

IF YOUR HONOR HAS NO MORE QUESTIONS, I'LL LEAVE IT AT THAT.

THE COURT: THANK YOU.

MR. WALSH: YOUR HONOR, VERY BRIEFLY, IF I MAY.

JUST A FEW POINTS, YOUR HONOR. DEFENSE COUNSEL JUST WENT INTO SEVERAL, I GUESS, CITATIONS IN THE SPEC. NOT SURPRISINGLY, HE IGNORED THE CLAIMS AGAIN.

THE CLAIMS TELL US WHAT THE LOGIC IS. THE DOWNLOAD LOGIC, RESPONSIVE TO TRANSMIT DESCRIPTORS FOR RETRIEVING DATA.

THAT'S ALL WE NEED FOR LINEAR TECHNOLOGY.

MR.STEPHENS ALSO MENTIONED -- I THINK HE SAID:

"THE LAW IS QUITE CLEAR ON THIS POINT."

IT IS CLEAR IF YOU ARE IN 112-6 LAND, AND YOU HAVE A GENERAL PURPOSE COMPUTER.

WE'RE NOT IN 112-6 LAND. WE DON'T HAVE A GENERAL PURPOSE COMPUTER. WMS GAMING DOES NOT APPLY HERE.

HE MENTIONED THE DRAFTER COULD HAVE USED THE TERM "CIRCUITRY." HE COULD HAVE USED THE TERM "MEANS," TOO. IN FACT, HE DID USE THE TERM "MEANS" A NUMBER OF TIMES.

HERE HE USED THE TERM "LOGIC" AND HE USED "DOWNLOAD LOGIC."

AND, FINALLY, YOUR HONOR, I'D ALSO LIKE TO POINT OUT

AGAIN IN THEIR INVALIDITY CONTENTIONS IT'S THE DEFENDANTS THAT SPECIFICALLY SAY MANY COMMUNICATION CONTROLLERS AND ADAPTERS HAD CIRCUITRY THAT MOVED DATA FROM A HOST MEMORY TO A FIFO ON THE CONTROLLER IN REFERRING TO DOWNLOAD LOGIC.

THIS IS AT LEAST REASONABLY WELL-UNDERSTOOD IN THE ART UNDER WATTS; IT IS NOT A 112-6 ISSUE.

JUST TO BE CLEAR, YOUR HONOR, WE BELIEVE THAT ALL OF THESE TERMS JUST NEED THEIR PLAIN ORDINARY MEANING. WE'VE PROVIDED ALTERNATIVE CONSTRUCTIONS. WE CAN CERTAINLY LIVE WITH THE CONSTRUCTION OF "LOGIC" THAT WAS PROVIDED BEFORE THAT I THINK WE SUGGESTED AT THE BEGINNING OF THIS PROCESS.

BUT WE BELIEVE IT'S CLEAR THAT IT'S NOT A 112-6 ISSUE.

THANK YOU.

MR. STEPHENS: YOUR HONOR, MAY I BRIEFLY ADDRESS THE INVALIDITY CONTENTION ISSUE? IT WON'T TAKE MORE THAN A MOMENT.

THE COURT: VERY WELL.

MR. STEPHENS: I JUST WANT TO POINT OUT THAT WHEN WE SERVED THE INVALIDITY CONTENTIONS, OF COURSE IT'S BEFORE CLAIM CONSTRUCTION. AND, OF COURSE, WE BELIEVE WE DON'T INFRINGE THESE CLAIMS. AND WE NECESSARILY HAVE TO USE THE CONSTRUCTION THAT IS AT LEAST IMPLIED BY THE INFRINGEMENT CONTENTIONS, RIGHT?

SO WHEN WE PUT TOGETHER THOSE INVALIDLY CONTENTIONS WE WERE LOOKING AT WHAT THEY SAY INFRINGES. AND THEN SAY:

"WELL, GEE, THAT'S FOUND IN THE PRIOR ART."

SO THIS IDEA THAT WE'RE MAKING ADMISSIONS ABOUT CLAIM CONSTRUCTION AND WHETHER THESE CLAIMS, WHETHER THESE SPECIFIC WORDS HAVE SPECIFIC MEANINGS AFTER CLAIM CONSTRUCTION WHEN WE PUT TOGETHER OUR INVALIDITY CONTENTIONS IS JUST NOT RIGHT.

MR. WALSH: A POINT OF CLARIFICATION, YOUR HONOR.

THE INVALIDITY CONTENTIONS WE WERE CITING TO WERE THE AMENDED INVALIDITY CONTENTIONS WHICH WERE SUBMITTED AFTER --

THE COURT: I LOVE THE PASSION WHICH YOU ALL BRING TO THE COURT. BUT I'LL TELL YOU, THIS IS ALL LOST ON ME AT THIS POINT, SO SAVE YOUR BREATH.

BUT IF AT SOME POINT ALONG THE PROCESS IT GETS TO A POINT WHERE THERE'S AN ORDER THAT MAKES THIS SIGNIFICANT, FEEL FREE TO BRING IT BACK.

NOW, I'M GOING TO TRY AND GET YOU A RULING ON THIS. AND THEN, IT IS MY PRACTICE WHEN I DO THIS IS TO SET UP ANOTHER TIME FOR US TO SIT DOWN AND TALK. AND IN VIEW OF MY OWN PERSONAL SITUATION THAT HAS TO DO WITH MY TENURE ON THE BENCH, I WANT TO DO THAT SOONER THAN LATER SO AS TO BE OF HELP TO YOU IN MAYBE HELPING TO SET THIS CASE UP SO THAT IT MOVES AHEAD MORE SMOOTHLY THAN NOT.

IF YOU COULD SEE YOUR WAY FREE TO BE ABLE TO TRY THIS CASE BETWEEN NOW AND AUGUST, THAT WOULD BE GREAT. I DOUBT IF THAT'S THE CASE, BUT THERE OUGHT TO BE SOMETHING THAT MAYBE WE CAN TALK ABOUT AS TO HOW BEST TO PUT THE CASE IN THE RIGHT SHAPE.

GIVING YOU A CLAIM CONSTRUCTION ORDER, OF COURSE, IS MY CURRENT RESPONSIBILITY. AND I'LL DO THAT AS QUICKLY AS I CAN.

SO THAT PART OF THE MATTER IS SUBMITTED.

(THEREUPON, THIS HEARING WAS CONCLUDED.)

CERTIFICATE OF REPORTER

I, KATHERINE WYATT, THE UNDERSIGNED, HEREBY CERTIFY THAT THE FOREGOING PROCEEDINGS WERE REPORTED BY ME, A CERTIFIED SHORTHAND REPORTER, AND WERE THEREAFTER TRANSCRIBED BY ME INTO TYPEWRITING; THAT THE FOREGOING IS A FULL, COMPLETE AND TRUE RECORD OF SAID PROCEEDINGS.

I FURTHER CERTIFY THAT I AM NOT OF COUNSEL OR ATTORNEY FOR EITHER OR ANY OF THE PARTIES IN THE FOREGOING PROCEEDINGS AND CAPTION NAMED, OR IN ANY WAY INTERESTED IN THE OUTCOME OF THE CAUSE NAMED IN SAID CAPTION.

THE FEE CHARGED AND THE PAGE FORMAT FOR THE TRANSCRIPT CONFORM TO THE REGULATIONS OF THE JUDICIAL CONFERENCE.

_____

/S/ KATHERINE WYATT